Handbook on
CHARITABLE GIVING

THE FOUNDATION
JEWISH COMMUNITY FOUNDATION
LOS ANGELES

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INTRODUCTION

The *Handbook on Charitable Giving* (2018 edition) is prepared and distributed by the Jewish Community Foundation of Los Angeles as a service to attorneys, accountants and other financial advisors. The *Handbook* is not a comprehensive treatment of any of the topics covered. Rather, it is a convenient reference on estate and income tax planning and charitable giving. The reader should consult with his or her own tax advisor before making a gift or transferring any assets.*

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*IRS Circular 230: Under U.S. Treasury regulations, we are required to inform you that any tax advice contained in this *Handbook* is not intended to be used, and cannot be used, to avoid penalties imposed under the Internal Revenue Code.

CONTACT THE FOUNDATION'S DEVELOPMENT TEAM

Charitable Giving Consultations

Our experts will work with you and your clients to develop a personalized plan to achieve the greatest impact with substantial tax benefits. We invite you to learn more about how to select the right giving strategy for your clients to make a difference.

Please contact us today to learn how quick and easy it is to get started.

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See biographies on pages 8-11.

Quick Facts about The Foundation

- 1,300+ donors
- More than $1.25 billion in total assets
- Awarded over $100 million in grants in 2017
- Over $1 billion in grants distributed in the past 25 years
- Thousands of nonprofit organizations supported

To learn what The Foundation can offer your clients, please visit **www.jewishfoundationla.org** and read about the various products and tools that will help guide you toward the best option for each client's unique situation.

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A MESSAGE FROM THE FOUNDATION'S LEADERSHIP

The Jewish Community Foundation of Los Angeles (The Foundation) is delighted to provide this updated *Handbook on Charitable Giving*. The Foundation partners with professional advisors to help them address their clients' charitable giving needs. We also offer useful resources, like this Handbook, our *Estate Planning Workbook*, and our annual Professional Advisor Speaker Series.

There's a saying that goes, "If you think earning money is hard, try giving it away." With our changing tax codes and the complexities of trust and estate law, The Foundation developed this Handbook as an expert resource to help you advise your clients and support their charitable goals.

Established in 1954, The Foundation manages $1.25 billion of assets entrusted to it by over 1,300 families. The Foundation partners with donors to shape meaningful philanthropic strategies, magnify the impact of giving, and build enduring charitable legacies. Over the past 25 years, The Foundation has distributed over $1 billion in grants to thousands of nonprofits across a diverse spectrum.

A hallmark of The Foundation is its leadership. Our Board of Trustees is comprised of distinguished business and civic leaders. In addition to their in-depth knowledge of our community, they possess expertise in law, finance, investing, management and philanthropy, enabling The Foundation to provide valuable guidance to the community.

Another vital resource is our Center for Designed Philanthropy. The Center's seasoned staff works with your clients—and with you, their professional advisor—to explore their interests, identify their values and passions, and ultimately connect them with outstanding programs and organizations. Concurrently, the Handbook on Charitable Giving is intended to offer you tax, estate, and financial planning insights to help guide your clients through the charitable giving process.

For additional information, please contact us at 323.761.8704 or development@jewishfoundationla.org. We welcome the opportunity to serve you and your clients, and hope to see you at our Professional Advisor Speaker Series.

William R. Feiler
Chair

Marvin I. Schotland
President and CEO

P.S. Please visit **www.jewishfoundationla.org/advisors** to view a section dedicated to professional advisors, where you can find valuable tools and resources.

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WHAT IS A COMMUNITY FOUNDATION?

A community foundation is a Section 501(c)(3) public charity, overseen by a governing board of volunteers, that receives its funds from individuals, families, foundations, corporations and civic organizations in the community. By partnering with a community foundation, donors can accomplish their charitable goals strategically and effectively, while building permanent resources for the community.

For the donor, giving through a community foundation offers significant tax benefits and is more tax effective than establishing a private foundation; it's also less complicated. A community foundation can:

- quickly establish a fund in the donor's name
- provide skilled investment management of donor funds
- offer ongoing access to professional philanthropic expertise
- issue regular reports on investment performance
- file necessary tax returns
- process grant recommendations on a flexible schedule

A community foundation also serves an important leadership role in the community by:

- facilitating strategic collaboration among like-minded funders to respond to particular challenges (in medical research and social services, for example)
- bringing attention to emerging community needs
- making grants with discretionary funds to seed and strengthen vital community programs and services
- offering site visits and other educational opportunities to help make donors more effective philanthropists
- becoming a catalyst for change

The very first community foundation was formed in 1914 in Cleveland, and today there are hundreds of community foundations throughout the United States. The Jewish Community Foundation of Los Angeles, founded in 1954, is among the top 10 foundations in Los Angeles, based on assets.

JEWISH COMMUNITY FOUNDATION OF LOS ANGELES OVERVIEW

65 Years of Experience to Guide You

For nearly 65 years, The Foundation has helped individuals, institutions and professional advisors have the greatest possible impact on both the Jewish community and the community at large.

We are the largest manager of charitable assets and the leader in charitable giving solutions for Greater Los Angeles Jewish philanthropists. The Foundation currently manages assets of more than $1 billion and ranks among the top 10 Los Angeles foundations (based on assets).

In 2017, The Foundation and its more than 1,300 donors distributed $100 million in grants to more than 2,600 nonprofits with programs that span the range of philanthropic giving.

Our History – A Foundation for the Community

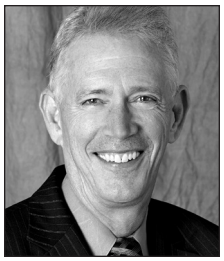
The Jewish Community Foundation of Los Angeles was born on a summer day in 1954.

Los Angeles' Jewish population had tripled in size from the 1930s to the 1950s. Anticipating rapidly growing needs, the Jewish Federation of Greater Los Angeles helped establish the Jewish Community Foundation to build permanent philanthropic resources for the community.

Several dedicated Jewish leaders had the wisdom to plan for the community's future needs in a time of prosperity. They gathered at the home of Judge Isaac Pacht — the organization's founding chairman — to discuss The Foundation's mission, by-laws, and articles of incorporation. "The ultimate objective," Judge Pacht declared, "is to build up a substantial fund for capital needs and special needs as they arise in the community."

The Foundation has evolved with changing times, while remaining true to the values that inspired its creation. Today we are a multi-faceted institution helping philanthropists with all aspects of charitable giving, in the Jewish community and beyond.

THE FOUNDATION'S SENIOR MANAGEMENT TEAM



Marvin I. Schotland
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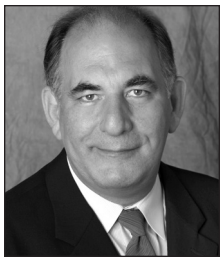
Marvin joined The Foundation in 1989 as executive vice president after serving four years as executive director of the Jewish Community Foundation of Greater MetroWest, New Jersey and two years as executive director of the Jewish Community Foundation of Southern Arizona. Marvin earned his bachelor's degree and JD from the University of Cincinnati. He previously was an Ohio assistant attorney general and was in private legal practice in Tucson, Arizona, specializing in income and estate tax planning. He also has been co-adjunct professor at the University of Arizona and Rutgers State University. Marvin is on the Board of Advisors of University of Southern California's Center on Philanthropy and Public Policy and serves on boards for 40 family foundations. He previously served as board chair of Southern California Grantmakers and on the Board of Directors for the Jewish Funders Network. Marvin and his wife, Sandy, have two children and three grandchildren.



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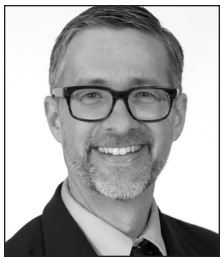
Dan joined The Foundation in 2007 to oversee and coordinate all philanthropic services. Prior to joining The Foundation, Dan was deputy director for development at the Los Angeles Philharmonic Association. He also worked as vice president of development at American Jewish University, American Jewish Committee, Jewish Federation of Greater Los Angeles, and the Northridge Hospital Foundation. Dan earned his bachelor's degree in design and industry from San Francisco State University, a master's degree in social work from the University of Southern California and a master's degree in Jewish communal service from Hebrew Union College-Jewish Institute of Religion (HUC-JIR). He has served as a consultant to nonprofits throughout Los Angeles, published articles about planned giving, and is a faculty member of the American Jewish University MBA graduate program and its Rabbinic Management Institute. Dan has been honored by the Jewish Communal Professionals of Southern California and received an honorary doctorate from HUC-JIR.

THE FOUNDATION'S SENIOR MANAGEMENT TEAM



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David joined The Foundation in 2015, bringing a diverse background in finance and operating roles across the nonprofit sector, including direct community foundation experience. Prior to joining The Foundation, David served as chief financial officer at Playworks, a national nonprofit focused on promoting youth recreational activity and fitness. Earlier, he held the positions of chief financial officer and chief operating officer for Community Foundation Sonoma County, where he led financial planning and budgeting functions, as well as staffed an investment committee with oversight of approximately $100 million in assets. David also previously served as director of finance and operations for the California Association of Food Banks. He earned his bachelor's degree in molecular biology at Massachusetts Institute of Technology and a master's degree in public policy from the University of California, Berkeley, where he also earned a professional accounting certificate.

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Steve joined The Foundation in 2016 with more than 25 years of experience working with individuals, families, corporations, and foundations to help them achieve their philanthropic vision. He has extensive experience managing and successfully implementing large advancement campaigns. Steve came to The Foundation following more than a decade in senior development roles in higher education, including the University of California, Los Angeles and the University of California, San Diego, contributing to those teams' efforts to increase philanthropic support for education and health care. Steve began his career working at Jewish Federations in Madison, Atlanta, and Los Angeles. He earned his bachelor's degree from the University of Michigan, a master's degree in Jewish communal service from Hebrew Union College-Jewish Institute of Religion, and a master's degree in public administration from the University of Southern California. Steve and his wife Stephanie live in Los Angeles and have three children.

THE FOUNDATION'S SENIOR MANAGEMENT TEAM

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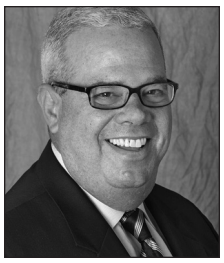
Lew joined The Foundation in 1999 to lead its marketing and communications initiatives, and develop a clear, distinct and contemporary brand image in the philanthropic marketplace. With more than 30 years of marketing experience, his portfolio includes all branding, marketing, advertising, publicity and online activity for The Foundation; helping it maintain a brand leadership position in a very competitive nonprofit environment. Prior to joining The Foundation, Lew spent 15 years in corporate marketing and advertising, working for J. Walter Thompson, an international ad agency, and Experian, a credit and information services company. Lew graduated from the University of Illinois in Chicago with a bachelor's degree in political science and Judaic studies.



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Baruch joined The Foundation in 1999, bringing with him more than 30 years of development and marketing experience to increase the assets of The Foundation. Baruch previously served as executive director of The California-Israel Chamber of Commerce. He also served in senior positions at the Jewish Federation of Greater Los Angeles and the American Nurses Association, as well as senior marketing and management positions at Fortune 100 and Fortune 500 corporations. Baruch earned his bachelor's degree from Long Island University and his master's degree from The City University of New York.

Elana Wien
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Elana joined The Foundation's Center for Designed Philanthropy in 2012, became its director in 2014, and was promoted to its vice president in 2017. She manages the vetting and distribution of The Foundation's grantmaking and the customized philanthropic services provided to Foundation donors. Previously she served as a public affairs consultant on a national telecommunications merger in Washington, D.C. She also served as assistant regional director for the Anti-Defamation League and as a fund development and strategic communications consultant. Elana graduated magna cum laude from the University of California, Berkeley with a bachelor's degree in geography. She received her master's degree in anthropology from the Universidad de las Americas as a Rotary Ambassadorial Scholar to Mexico. Elana serves on the Family Philanthropy Advisory Council of Southern California Grantmakers and as a panelist/moderator at nonprofit events. In 2018, Elana was awarded a Wexner Field Fellowship for promising Jewish professionals.

THE FOUNDATION'S SENIOR MANAGEMENT TEAM

Ellen Rosen
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Ellen joined The Foundation in 2017 to oversee all legal and compliance matters. She also handles complex transactions and works closely with The Foundation's Development team, donors, and their advisors. Prior to joining The Foundation, Ellen was a Tax Partner and Consultant at CohnReznick, a national accounting firm, providing advisory services to clients in the areas of estate planning, taxation, and the formation of private foundations and other nonprofits. She also served as Senior Attorney in the trust and estate practice group at Sheppard, Mullin, Richter & Hampton for seven years, and as Tax Manager at Ernst & Young for four years. Ellen received her bachelor's degree in accounting from the University of Massachusetts, Amherst, her JD from the University of Southern California, and her MBA from Pepperdine University. She is a member of the Women Lawyers Association of Los Angeles.

Natella Royzman
Director of Charitable Gift Planning
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Natella joined The Foundation in 2017, working closely with The Foundation's donors and their advisors to help them find meaningful and effective solutions for their charitable giving goals. Natella was previously the managing attorney of Royzman Law Firm, specializing in the representation of creditors, debtors, trustees, and third parties in bankruptcy and bankruptcy litigation matters. She also handled general business and commercial litigation matters. Her clients included entrepreneurs, professionals, and businesses spanning a wide array of industries. Earlier in her career, Natella was an associate at the Los Angeles offices of Loeb & Loeb, LLP. She received her bachelor's degree in English, summa cum laude, from California State University, Northridge. She earned a JD from the University of California, Hastings College of the Law, receiving honors for her skills in oral advocacy and negotiation and settlement. She was named a Super Lawyers "Rising Star" for the years 2012-2016.

THE FOUNDATION'S GRANTMAKING

To ensure the vitality of the Jewish community and to improve the quality of life of the community-at-large, The Foundation awards grants on a competitive basis through its Foundation Grants program. In concert with Foundation staff, the Grant Committees work throughout the year to provide oversight and help ensure that grant programs achieve the greatest possible impact.

Awards are made in the following categories: Cutting Edge Grants, Israel Grants, General Community Grants, and Capital Grants. Grants are also made by donors supporting a wide range of causes in the Jewish community and the community at large — locally, nationally, and in Israel.

Over the past 25 years, The Foundation has distributed more than $1 billion in grants to thousands of nonprofits across a diverse spectrum. These organizations work in the fields of social services, education, arts and culture, health, science, environment, and Jewish life. They serve the needs of children, at-risk youth, the elderly, and people with special needs, among many others.

To learn more about The Foundation's grant recipients, please visit **www.jewishfoundationla.org**.

Cutting Edge GRANTS

Seed funding to support transformative new programs in the Los Angeles Jewish community

General Community GRANTS

Addressing critical needs in the wider Los Angeles community through *tikkun olam* ("repairing the world")

Israel GRANTS

Creating economic opportunity and furthering pluralistic Jewish identity in Israel

Capital GRANTS

Construction and renovation for Los Angeles Jewish institutions

CENTER FOR DESIGNED PHILANTHROPY

A distinguishing feature of The Foundation is its capability to develop a strategic and comprehensive philanthropic plan for donors. Through this approach, donors are able to fulfill their charitable goals and giving becomes more meaningful and effective.

The Foundation serves as a valuable resource to donors, professional advisors, grant-seekers and private family foundations, and provides an ideal way to help people shape the future. The Foundation's Center for Designed Philanthropy provides the resources, expertise, and connections to design thoughtful giving strategies tailored to your needs. The Center works closely with donors to help them explore their interests and identify their passions, ultimately connecting them with outstanding programs and organizations.

For more information, contact the Center for Designed Philanthropy at **323.761.8705** or **thecenter@jewishfoundationla.org**.

ENDOWMENT FUNDS AT THE FOUNDATION

An Endowment Fund is a permanent fund which builds enduring resources to address both current and future community needs, both Jewish and/or non-sectarian, and guarantees that the donor's legacy will continue long after his or her lifetime. It is often named for the donor, the donor's family, or someone the donor wishes to honor. Endowment Funds are a key charitable instrument used to fulfill a person's or a family's legacy in perpetuity.

An Endowment Fund is established by making an irrevocable gift to The Foundation of appreciated marketable securities, commercial or residential real estate, limited partnership interests, cash, closely held stock, mutual fund and REIT shares, bonds (corporate, municipal or State of Israel), retirement plan assets (IRAs, Keoghs or others), insurance policies or certain other assets. Assets can be transferred to The Foundation during the donor's lifetime by making a direct gift to The Foundation and/or upon death by making a bequest to The Foundation through a will or trust. While some donors have established Endowment Funds using millions of dollars in assets, an Endowment Fund at the Jewish Community Foundation of Los Angeles requires a minimum contribution of only $25,000.

An Endowment Fund can also be funded through assets in an existing charitable fund at The Foundation, such as a Donor Advised Fund, a Family Support Organization or a Charitable Gift Annuity or a Charitable Remainder Trust.

The Foundation's endowment investment portfolio is managed to meet today's community needs as well as those of future generations. The financial emphasis of this charitable vehicle is to safeguard the value of the donor's charitable assets while providing liquidity for annual distributions to the donor's charities of choice.

Endowment Fund options:

- **Field of Interest Endowment Fund**
  If a donor is uncertain about which nonprofit organizations he or she wishes to support, he or she can select a general area of need—for example, Jewish education, arts and culture, elder care or medical research. This type of Endowment Fund provides support within the field(s) designated by the donor.
- **Designated Restricted Endowment Fund**
  If a donor has favorite charities and nonprofit organizations he or she supports, this type of Endowment Fund is an ideal way to support them in perpetuity. It can be used to benefit the institution of the donor's choice, be it a particular hospital, synagogue, day school, university, museum, home for the aging or virtually any other nonprofit organization. If an Endowment Fund is set up to support a particular nonprofit beneficiary organization, and at some point, that organization is no longer in existence. The Foundation will identify another nonprofit organization with a similar mission as the original designee, and will direct distributions there to honor the intention of the donor.
- **The Foundation's Permanent Legacy Fund** This Endowment Fund will enable a donor to make a difference by seeding new and innovative programs and strategic initiatives in greater Los Angeles and provide relief assistance during emergencies.
- **Jewish Federation of Greater Los Angeles Legacy Fund**
  This Endowment Fund will enable a donor who is interested in supporting the Los Angeles Jewish Federation, its agencies and programs, to continue to contribute to the Federation's annual campaign to meet critical needs—locally, nationally and internationally, including in Israel—long after the donor has passed on.

INTRODUCTION TO PART I: TAX INCENTIVES FOR CHARITABLE GIVING

Charitable giving has long been a vital part of our economic system. To encourage philanthropy, the federal and state income tax laws have granted favored tax treatment for charitable gifts.

The humanitarian aspects of private philanthropy have traditionally been its primary motivating force. The tax benefits resulting from charitable giving, however, have assumed increasing importance as our tax system has grown in complexity and scope. To ensure the greatest possible tax advantage when making charitable contributions, it is extremely important to be aware of the impact of the individual's bracket, the form of the gift and the timing of the gift.

IN THIS SECTION, WE COVER:

INCOME TAX DEDUCTIONS FOR CASH GIFTS

The simplest method of charitable giving is the payment of cash to a qualified charitable organization such as the Jewish Community Foundation of Los Angeles. Forms for making a bequest to The Foundation for inclusion in wills and living trusts are included in the Appendix of this *Handbook*. The gift is deductible within the percentage limitations imposed on cash contributions, either 50 percent or 30 percent of the donor's contribution base (adjusted gross income, in most cases), depending on the type of organization to which the donation is made. If the donor contributes more than the permitted percentage, he or she may "carryover" the excess contribution. The percentage limitations and carryover" rules are discussed below.

The "real" cost to the donor of making a cash contribution is the amount of the donated cash, decreased by its tax benefit (i.e., the amount by which the contribution deduction reduces the donor's income taxes). Accordingly, the "real" cost of making a charitable contribution depends upon the donor's income tax bracket. The higher the bracket, the lower the cost of making the contribution. This concept is illustrated as follows:

Example:

Mr. and Mrs. B file a joint return, claim two personal exemptions and are not subject to the alternative minimum tax. In 2010, they make a $10,000 cash contribution to The Foundation. Prior to making the contribution, they have taxable income of $170,000, and after the gift, their taxable income is $160,000. Mr. and Mrs. B are in a 36% federal tax bracket so the gift results in a $3,600 reduction in federal taxes (plus an additional saving in state income taxes). Accordingly, the net cost to Mr. and Mrs. B of making the cash contribution to The Foundation is $6,400 ($10,000 minus $3,600 tax savings).

No deduction is permitted for any contribution of a cash, check or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution.[i]

In addition, for all contributions of $250 or more, contemporaneous written acknowledgment of the contribution must be made from the donee organization to the donor, as described in further detail in Part II under "Substantiation & Appraisal of Gifts of Property to Charity."

Contributions may be made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization. Substantiation may be accomplished by a pay stub, form W-2 or other document furnished by the employer that evidences the amount withheld by the employer for the purpose of the payment to a donee organization, and by a pledge card or other document prepared by the donee that includes a statement that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.[ii] For the purpose of applying the $250 threshold for contributions made by such wage withholding, the amount withheld from each payment of wages to a taxpayer is treated as a separate contribution.

PERCENTAGE LIMITATIONS & CARRYOVER OF EXCESS CONTRIBUTIONS

Although our income tax laws encourage charitable contributions, certain limitations are imposed on the extent to which such contributions may be deducted currently against taxable income. How much a donor may deduct as a charitable contribution in any year is determined by the application of the percentage limitation to the donor's contribution base. A donor's contribution base is his or her adjusted gross income without regard to any net operating loss carryback.[iii] The maximum allowable deduction in a year for a charitable contribution to a public charity by an individual donor is 60 percent of the donor's contribution base. The extent to which this limitation applies in a particular case depends on the type of organization to which the donor has made contributions, the type of property that has been contributed and, in some cases, how the property is used by the charity.

The Fifty Percent-Type Organization

For purposes of the tax law, the most favored contributions are those made to organizations referred to as 50 percent-type organizations (such as the Jewish Community Foundation). These organizations are "public" in nature and are more specifically described in the Internal Revenue Code. Although the tax law favors the public charity, the deductions for contributions to these organizations may be curtailed further depending upon the nature of the property contributed.

The deduction for contributions made to 50 percent-type organizations cannot exceed 50 percent of the donor's contribution base for that year.[iv] This general limitation does not apply to contributions of long-term capital gain property (property that would have resulted in long-term capital gain if sold) if the contribution's deduction is based on the full fair market value of the property. Contributions of such property are currently deductible only to the extent of 30 percent of a donor's contribution base.[v]

The 30 percent limitation on the deduction of contributions of long-term capital gain property is not absolute. A donor may avoid the limitation by making a "step down" election. Such an election requires the donor to reduce his or her deduction from the full fair market value of the property contributed by the amount of gain that would have been long-term capital gain had the property been sold.[vi] This is the same tax treatment that is mandatory for contributions of tangible personal property put to an unrelated use by the charity.[vii] The resulting deduction is equal to the donor's tax basis in the property. By making this election, the donor's contribution is then subject to the general 50 percent limitation rather than the special 30 percent limitation.[viii]

The operation of the "step down" election is illustrated as follows:

> Example:
>
> *Ms. D contributed appreciated long-term capital gain securities with a fair market value of $25,000 to The Foundation. Ms. D's basis in the securities is $20,000 and her contribution base is $60,000. The 30 percent limitation would restrict her current contribution deduction to $18,000 (30 percent of $60,000). Alternatively, Ms. D may qualify the contribution for the 50 percent limitation by reducing the amount of the contribution by the unrealized long-term capital gain, or $5,000. Use of the "step down" election would increase Ms. D's current deduction to $20,000. The $5,000 by which the actual value of the securities exceeds the allowable deduction is forfeited.*

Whether the "step down" election is appropriate depends upon the facts of the particular case. For example, a donor may consider making the election if the unrealized appreciation of the property contributed is small. It may also be advisable to use the "step down" election when circumstances such as the donor's health or advanced age make use of the carryover deduction in later years uncertain. The carryover deduction is discussed below. In addition, a donor should consider the effect that the election may have on carryover deductions from prior years that are also subject to the 30 percent limitation. If the "step down" election is made, the amount of those years' carryovers must be calculated as though the election has been made in the years in which the carryover arose.[ix]

The Thirty Percent-Type Organization

Contributions to 30 percent-type organizations (organizations that are not 50 percent-type organizations), are subject to two separate percentage limitations. The first limitation is a general limitation. The second is a special limitation that applies only to contributions of long-term capital gain property.

Contributions made to 30 percent-type organizations are deductible to the extent that they do not exceed 30 percent of the donor's contribution base for the year. That does not mean, however, that contributions within this limitation can always be deducted currently, since their deduction may be limited by current contributions to 50 percent-type organizations.

In applying the 30 percent limitation, contributions to 50 percent-type organizations are considered first to determine whether any amount is available under the general 50 percent limitation. The effect of this prescribed order is illustrated in the following example:

Example:

Ms. C has a contribution base for 2010 of $100,000. Ms. C contributes long-term capital gain property with a fair market value of $50,000 to a 50 percent-type organization and, in addition, contributes $10,000 cash to various 30 percent-type organizations. In determining whether the cash contributions are currently deductible, the donor must consider the long-term capital gain contribution made to the 50 percent-type organization at full value, even though it is currently deductible only to the extent of $30,000 (30 percent of contribution base).[x] *Since the fair market value of that property contribution equals 50 percent of the donor's contribution base, no current deduction is allowed for cash contributions. Ms. C has carryovers to 2011 of $20,000 applicable to 50 percent-type organizations and $10,000 applicable to 30 percent-type organizations.*

Like contributions of long-term capital gain property to 50 percent-type organizations, such contributions to 30 percent-type organizations are subject to a special limitation in determining the amount that is currently deductible. Generally, a deduction for such type of property is limited to 20 percent of the donor's contribution base.[xi]

Carryovers

Contributions that exceed the various percentage limitations may be carried over for deduction in five succeeding tax years.[xii] Whether such contributions actually may be used within the carryover period depends on the extent to which the donor makes contributions in the years to which excess contributions are carried.

Current contributions to 50 percent- and 30 percent-type organizations must be considered before any carryover contributions will be allowed.[xiii] As illustrated in the previous example, Ms. C has carryovers to 2011 of $20,000 applicable to 50 percent-type organizations and $10,000 applicable to 30 percent-type organizations. If Ms. C's 2011 contributions do not exceed her current year's contribution base, such carryovers may be utilized. If Ms. C's 2011 contributions exceed her contribution base, she will then have a carryover of 2011 contributions, in addition to a carryover of 2010 contributions.

TIMING OF GIFTS FOR MAXIMUM BENEFITS

In addition to the question of whether a gift should be made during the donor's lifetime or at death, there are several general rules to keep in mind when making lifetime charitable contributions.

1. A charitable gift generally is effective for income tax purposes at the time the gift is delivered to the charity. However, the gift must be unconditional and not be dependent upon some act or event before it is accepted.[xiv]

2. A contribution made by check is effective for income tax purposes when the check is unconditionally delivered or mailed, as long as the check subsequently clears the donor's bank in due course. Accordingly, a gift by check may be effective in one year even if the check does not clear the donor's bank account until the following year.[xv]

3. A postdated check is not an unconditional payment. For that reason, it is not deductible until the date listed.[xvi]

4. A check which is outstanding at the time of the donor's death is effective for income tax purposes at the time the check was unconditionally delivered or mailed by the donor.[xvii]

5. A contribution of stock is concluded upon the unconditional delivery of a properly endorsed stock certificate to the charity or the charity's agent. If, however, the donor delivers the stock certificate to the issuing corporation or to the donor's broker for transfer, the contribution is not completed until the stock is actually transferred on the corporation's books.[xviii] Therefore, it is preferable for the donor to deliver the stock certificate either to the charitable organization or to a broker who is acting as agent for the charity, especially for gifts made near the end of the year.

6. A charitable organization may accept a donor's promissory note as payment of a charitable contribution. The delivery of the note, however, does not constitute payment for tax purposes, and a charitable deduction is not allowed until the note is paid by the donor.[xix]

FOOTNOTES

[i] I.R.C. § 170(f)(17).

[ii] Reg. § 1.170A-13(f)(11)(i)(A) and (B).

[iii] I.R.C. § 170(b)(1)(G).

[iv] I.R.C. § 170(b)(1)(A).

[v] I.R.C. § 170(b)(1)(C)(i).

[vi] I.R.C. § 170(b)(1)(C)(iii).

[vii] I.R.C. § 170(e)(1)(B)(i).

[viii] I.R.C. § 170(b)(1)(C)(iii).

[ix] I.R.C. § 170(b)(1)(C)(iii).

[x] I.R.C. § 170(b)(1)(B)(ii).

[xi] I.R.C. § 170(b)(D)(i).

[xii] § 170(b)(C)(ii) and I.R.C. § 170(b)(D)(ii).

[xiii] I.R.C. § 170(d)(1).

[xiv] Reg. § 1.170A-1(b).

[xv] Reg. § 1.170A-1(b); Rev. Rul. 54-465, 1954-2 C.B. 93.

[xvi] Brooks Griffin, 49 T.C. 253 (1967).

[xvii] Estate of Modie J. Spiegel, 12 T.C. 524.

[xviii] Reg. § 1.170A-1(b).

[xix] Rev. Rul. 68-174, 1968-1 C.B. 81.

INTRODUCTION TO PART II: TAX TREATMENT OF OUTRIGHT GIFTS OF PROPERTY TO A PUBLIC CHARITY

The tax treatment of outright gifts of property to a public charity varies depending upon the nature of the property. In some instances, as in the case of long-term capital gain property, a contribution deduction is generally allowable for the fair market value of the property. In other instances, as in the case of ordinary income property (property that would have resulted in ordinary income or short-term capital gain if sold by the donor), the contribution deduction is generally allowable for the cost basis of the property. In analyzing the tax benefit of a charitable gift, it is important to distinguish between capital gain property and ordinary income property because the rules regarding charitable contributions differ greatly.

In all instances, a donor contemplating a charitable contribution should be advised of the tax rules governing gifts of property. Often, a gift of property, as opposed to a gift of cash, yields additional tax savings, thereby affording the dual benefit of a larger gift to the recipient charity at less after-tax cost to the donor.

IN THIS SECTION, WE COVER:

APPRECIATED SECURITIES

Except for securities held as inventory in the hands of a dealer, stocks, bonds, and other corporate obligations are capital assets.[xx] If such securities are held for more than one year, gain on their sale will produce long-term capital gain.

The contribution of appreciated long-term capital gain securities to a public charity yields a contribution deduction for the full fair market value of the securities, and does not give rise to taxable gain on the appreciation. In addition, satisfaction of a pledge of a specific dollar amount by the contribution of appreciated property does not result in taxable gain to the donor.[xxi]

For contributions of appreciated long-term capital gain securities to a private foundation, the rules are more complex. The general rule is that a charitable deduction is allowed only for the tax basis of the securities. However, there is a special rule that allows a deduction for the full fair market value of appreciated publicly traded long-term capital gain stock contributed to a private foundation.

Loss is not recognized as a result of a contribution of appreciated property to a charity. Accordingly, a donor who holds property that has declined in value below its tax basis should first sell the property and then contribute the proceeds of the sale. The sale yields a deductible loss that would otherwise be denied had the donor contributed the property itself.

On the other hand, a donor generally should make a gift of appreciated property rather than the proceeds from its sale because a contribution of appreciated property can be made at less net after-tax cost than if the property were sold and the proceeds contributed.

Example:

Ms. A has taxable income of $175,000 in 2010 before any sales of property or charitable contributions. Ms. A owns appreciated long-term capital gain stock that cost her $10,000 and has a fair market value of $30,000. Ms. A plans to make a gift of $30,000 to The Foundation. Ms. A has the choice of either selling the stock and donating the proceeds or donating the stock. Since the maximum federal tax rate for capital gains is 15%, it would cost Ms. A $3,000 more in federal income tax to sell the stock and donate the proceeds than to contribute the stock itself.

Thus, by using appreciated property, Ms. A can make a larger gift without any additional cost to herself. When Ms. A contributes appreciated property, she makes available to the charity the amount that she otherwise would have to pay in additional taxes if she sold the property and contributed the after tax proceeds.

A contribution of appreciated ordinary income property (or short-term capital gain property) does not have the same favorable tax result as a contribution of appreciated long-term capital gain property. In the case of appreciated long-term capital gain property, the contribution deduction is the fair market value of the property. In the case of ordinary income property, the contribution deduction is limited to the amount of tax basis, which yields the same tax result as sale of the property and a charitable contribution of the after tax proceeds.

ORDINARY INCOME PROPERTY

Any property that on sale would produce gain other than long-term capital gain generally is referred to as "ordinary income property." As indicated above, the distinction between long-term capital gain property and ordinary income property is an important one.

For an asset to yield long-term capital gain, it must be a capital asset and it must be held for a minimum period before its sale. Generally, assets must be held for more than one year to qualify for long-term capital gain treatment.

Examples of ordinary income property are (i) any capital asset that fails to meet the required holding period discussed above; (ii) inventory; (iii) improved real property or personal property subject to the recapture of depreciation rules, but only to the extent of the recapture; and (iv) other ordinary income property, including certain copyrights (literary, music or artistic compositions) and market discount bonds.[xxii]

If ordinary income property is contributed to a public charity, the amount of the charitable deduction is reduced by the amount that would have been taxed as ordinary income had the asset been sold at its fair market value.[xxiii] Stated differently, the charitable contribution is limited to the donor's basis in the property.

Example:

On December 31, 2010, Ms. C contributes stock acquired by her in June 2010 to The Foundation. The stock cost Ms. C $10,000 and has a fair market value of $15,000 on the date of contribution. The amount of Ms. C's charitable deduction is $10,000 since Ms. C has held the stock for less than one year.

TANGIBLE PERSONAL PROPERTY

In the case of a gift of tangible personal property, such as a painting, the amount of the charitable contribution deduction is the fair market value of the property on the date of contribution if the charity intends to use such property in connection with its exempt activities. If, however, the use of such property by the charity is unrelated to the purpose or function for which the charity was granted tax-exempt status, the allowable contribution deduction must be reduced by the amount of gain that would have been long-term capital gain had the property been sold at its fair market value.[xxiv]

Example 1:

Ms. D contributed to a public charity in 2010 a painting acquired by her in 2000. The painting cost Ms. D $3,000 and has a fair market value of $8,000 on the date of contribution. The painting cannot be used by the charity, and it is sold for $8,000. Ms. D's charitable contribution is $3,000, the fair market value of the painting of $8,000, less $5,000, the amount of gain that would have been long-term capital gain had the painting been sold by Ms. D.

Example 2:

If Ms. D's painting is of artistic significance and it is donated to the State University School of Art for display in the school's art gallery, the painting's use is related to the school's tax-exempt purpose and Ms. D would be entitled to a charitable contribution deduction of $8,000.

REAL PROPERTY

Generally, an outright gift of real property to a public charity entitles the donor to a charitable contribution deduction equal to the fair market value of the property. In the case of unencumbered appreciated property which is not subject to the so-called "bargain sale" rules discussed below, the donor will not recognize gain on the untaxed appreciation of the property.[xxv]

There are, however, certain limitations to the general rule. In the case of real property that has been depreciated, some portion of the depreciation may have to be recaptured and taxed as ordinary income if the property had been sold. If such property is contributed to a charitable organization, the fair market value of the gift must be reduced by the amount that would have been subject to recapture.[xxvi] In addition, if the donor is a dealer in real estate and holds the donated property for sale to customers in the ordinary course of business, the contribution deduction is reduced by the amount that would have been ordinary income if the property had been sold.[xxvii]

A donor also must be aware of the special rules relating to the circumstances under which a partial interest in property may be deducted as a charitable contribution. For example, an individual may desire to donate income-producing real estate to charity and receive a current income tax deduction while simultaneously retaining the benefit of the income for his or her lifetime. A contribution deduction will be allowed only if the transfer is made in trust, the form of which is governed by statute. The method of making a contribution in trust is discussed in detail in Part III of this *Handbook*.

Conversely, an undivided partial interest in the entire property may be given which will qualify for a current contribution deduction.

Example:

Mr. E transfers an undivided 50 percent interest in a commercial building to The Foundation. Subject to the other rules discussed herein, Mr. E will have a current contribution deduction equal to the fair market value of 50 percent of the property.

Since real property often is encumbered, a donor must be aware that the contribution of real property subject to debt may be treated the same as if the donor had received a payment in an amount equal to the debt. This will bring into play the "bargain sale" rules which have the effect of creating taxable gain to the donor. The "bargain sale" rules are discussed below.

ALTERNATIVE MINIMUM TAX

Individual donors are subject to the Alternative Minimum Tax (AMT) to the extent that it exceeds their regular income tax. Prior to 1993 contributions of appreciated long-term capital gain property gave rise to a tax preference item for AMT purposes in an amount equal to the difference between the fair market value of the contributed asset and its tax basis. The tax legislation passed in 1993 eliminated this tax preference for contributions made after December 31, 1992.

BUSINESS PLANNING WITH CONTRIBUTIONS OF STOCK OF CLOSELY HELD CORPORATIONS

Several business planning opportunities exist for a gift of stock of a closely held corporation.

A shareholder with a substantial interest in a closely held corporation may sometimes be faced with potential income tax when he or she contemplates selling that interest. These situations provide the shareholder with a unique opportunity to make a significant charitable contribution with little cost.

Example:

Mr. F is a majority shareholder of High-Tec, Inc. He has owned the stock for three years. His stock is worth $2,000,000 and has a tax basis of zero. Mr. F contemplates selling his entire interest for cash to Lo-Tec, Inc. in 2010. Exclusive of the sale of stock, Mr. F has taxable income of $400,000. If, prior to entering the agreement to sell, Mr. F. donates 10 percent ($200,000 value) of his stock to The Foundation, he will have reduced his capital gain by $200,000 and also receive a $200,000 charitable contribution deduction. His federal tax saving will be in excess of $100,000.

	Sale of 100%	**Contribution of 10% Sale of 90%**
Taxable income before sale of stock or charitable contribution	$400,000	$400,000
Capital gain arising from sale	2,000,000	1,800,000
Total	**$2,400,000**	**$2,200,000**
Contribution deduction arising from gift of property	-0-	(200,000)
Taxable Income	**$2,400,000**	**$2,000,000**

Another business planning opportunity may be realized when a donor donates stock of a closely held corporation that is redeemed shortly after its contribution to the charitable organization. As long as the charity is not legally obligated to surrender its shares in redemption, the donor gets a charitable deduction for the full value of the stock and recognizes no gain on the redemption.[xxviii]

A donor may contribute stock of a closely held corporation that is later repurchased by the donor. While courts have allowed a charitable deduction for the fair market value of the stock contributed, the IRS has taken the position that if there is a "gentlemen's agreement" that the contributed stock will be repurchased by the donor, the gift is to be ignored. Under the IRS position, the amount paid to the charity in reacquiring the stock will be allowed as a charitable contribution deduction, but the donor's basis in the stock remains the same as before the stock was transferred.

A shareholder of a corporation involved in a takeover attempt may find him or herself in the position of having to recognize gain. Such a result may, however, be avoided if the shareholder donates the stock to a charitable organization before the takeover is completed. If the offering party may still withdraw its bid, a shareholder should be able to make a gift of the stock without recognizing gain. A shareholder may also avoid gain in situations involving the liquidation of a corporation. In such cases, gain may be avoided if at the time the stock is contributed to charity, the plan of liquidation may be withdrawn.

Timing is Everything

What is essential in the case of both a takeover and a liquidation of a corporation is that the transaction may not have progressed to the point where it is no longer irreversible prior to the contribution of stock to charity. If such a point has been reached, the proceeds attributable to the donated stock will likely be taxable to the donor.[xxix]

BARGAIN SALES

Ms. G recognizes gain of $6,000 on the bargain sale transaction. Although the tax benefit of the transaction is reduced, the result is more beneficial than a sale of the securities followed by a cash contribution. Using the same facts as the previous example, a comparison of a bargain sale and a sale for fair market value/cash contribution is illustrated below.

The advantage results because $9,000 of long-term capital gain (gift element of $15,000, less $6,000 allocation of basis) is avoided in the bargain sale transaction. Recognition of the $9,000 gain would result in an additional federal tax liability of $2,790.

A bargain sale can result, quite unintentionally, when the donor receives no cash consideration, but transfers property subject to debt to a charity. In such a case, the donor is deemed to have received cash in an amount equal to the debt. The result is the same whether the charity assumes the debt or takes subject to the debt, or whether the debt is recourse or non-recourse.

Example 1:

Ms. G owns 100 shares of appreciated long-term capital gain stock with a tax basis of $10,000 and a fair market value of $25,000. Ms. G sells her stock to The Foundation in 2010 for her tax basis of $10,000. In this transaction, the "sales element" is $10,000 and the "gift element" is $15,000, the difference between the sales price received and the fair market value of the stock on the date of contribution. Basis allocation is, however, required since the stock is long-term capital gain property deductible at full fair market value. The results are as follows:

	Sale Portion	**Gift Portion**	**Total**
Fair market value of stock	$10,000	$15,000	$25,000
Allocation of basis	4,000	N/A	10,000
Taxable Gain	$ 6,000		
Charitable Gift		$15,000	

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A bargain sale can result, quite unintentionally, when the donor receives no cash consideration, but transfers property subject to debt to a charity. In such a case, the donor is deemed to have received cash in an amount equal to the debt. The result is the same whether the charity assumes the debt or takes subject to the debt, or whether the debt is recourse or non-recourse.

Example 2:

Ms. G transfers unimproved land which she has owned for more than one year to The Foundation. The land has a tax basis of $15,000 and a fair market value of $25,000. The property is encumbered by a mortgage of $10,000. Under the bargain sale rules, Ms. G is deemed to have received consideration of $10,000, the amount of the encumbrance. The contribution deduction is $15,000, but basis allocation is required in the same manner as in Example 1, yielding $4,000 of long-term capital gain.

	Bargain Sale	**Sale for FMV/CASH Contribution Gain Amount**
Sale proceeds	$10,000	$25,000
Tax basis		
Partial basis	(4,000)	
Full basis		10,000
Gain recognized	6,000	15,000
Contribution deduction	(15,000)	(15,000)
Net reduction in taxable income	(9,000)	(0)
Federal tax benefit assuming 31% rate	2,790	(0)
Sale proceeds retained	10,000	10,000
Total cash realized	$ 12,790	$ 10,000

LIFE INSURANCE

Life insurance can be a valuable asset for charitable giving. The donor enjoys substantial income and estate tax advantages while the charity receives both current and future benefits.

New Life Insurance

For gifts of new life insurance, the income tax deduction is equal to the amount of premium contributed for the purchase of the policy. A gift of life insurance also enables the donor to leverage a relatively small contribution into a dramatically large gift. For example, a contribution by a 40-year old male of $1,800 could purchase a policy of $86,000.

By creating this substantial benefit, the donor can endow his or her own philanthropy. The ability to support a charity normally ends with the donor's death. By establishing an endowment fund with The Foundation through life insurance, the donor is able to create an asset from which the income will perpetuate the donor's annual giving forever. Life insurance will pass to the Foundation immediately upon the donor's death, avoiding the time and costs of probate.

Existing Life Insurance

The contribution of a paid-up policy (or one for which no further premiums are required) enables the donor to an immediate income tax deduction equal to the lesser of:

a) total premiums paid to date, and

b) the fair market value of the policy (usually the cost of replacing the policy with a single premium contract).[xxxii]

A policy that has been in effect for several years, but which requires additional premiums, is valued in an amount equal to the "interpolated terminal reserve, plus unearned premiums, less outstanding policy loans," the total of which is approximately equal to the cash surrender value.[xxxiii] For example, when a donor bought a policy for $500 a year, paid over 12 years, the total premiums paid is $6,000. The same policy has a fair market value of $9,500, based on an interpolated terminal reserve of $9,000 and unearned premiums of $500. The donor will be entitled to a $6,000 tax deduction for a gift of the policy to charity.

Old policies that are no longer needed by the donor or donor's family can create current tax benefits, while removing an asset from the estate. Often these policies, purchased originally to protect the spouse and young children and provide liquidity for the family, outlive their usefulness. After the children have grown and the protection for which the insurance was purchased has been provided by other assets, the insurance can be used to satisfy a deduction.

These matured policies have the additional advantage of providing substantial cash values available to The Foundation. This cash in the policies and future dividends earned often will be sufficient to pay future premiums without further contributions by the donor or cost to The Foundation. Alternatively, the cash can be withdrawn by The Foundation for its immediate use.

How to Make a Gift of Life Insurance

A gift of new life insurance can be arranged by applying for a policy and naming The Foundation as owner and beneficiary. The initial and future premiums should be gifted directly to The Foundation to maximize the allowable deductions to the donor. The donor may elect to contribute the premiums annually or in a lump sum. A gift of existing life insurance can be achieved by utilizing the following form:

> *"I, John Donor, hereby assign to the Jewish Community Foundation of Los Angeles, all of my right, title and interest in the life insurance policy on my life issued by ABC Insurance Company, No. 123, in the face amount of $50,000."*

The policy should be delivered to an officer or designated representative of The Foundation.

SUBSTANTIATION & APPRAISAL OF GIFTS OF PROPERTY TO CHARITY

Overview

There have been a number of changes in recent years regarding the substantiation and appraisal of gifts of property to public charities. These changes have been brought about by perceived donor abuse, particularly with regard to the overvaluation by donors of donated property. Consequently, care should be exercised when valuing donated property to ensure the current IRS regulations concerning substantiation and appraisal are observed.

The records that must be kept and the forms that must be filed depend on whether the contributions fall within one of the four following categories:

a) Contributions of $500 or less;

b) Contributions of more than $500, but $5,000 or less;

c) Contributions of more than $5,000; or

d) Contributions of securities.

The rules described in this section do not apply to a donated motor vehicle, boat, or airplane if the claimed value exceeds $500. If the donee sells the vehicle, the amount of the deduction to the donor may be limited to the gross proceeds received from such sale. For information on vehicle donations, see IRS Publication 4302, A Charity's Guide to Vehicle Donations, and IRS Publication 4303, A Donor's Guide to Vehicle Donations.

In addition, a deduction generally is not allowed for a charitable contribution of any interest in property that consists of less than the donor's entire interest in the property other than certain transfers in trust or an undivided share of a donor's entire interest in the property. However, a deduction may be allowed for the value of a "qualified conservation contribution" if certain requirements not addressed in this section are met.

A qualified conservation contribution is the contribution of a "qualified real property interest" to a "qualified organization" exclusively for conservation purposes. To be eligible for a deduction, the conservation purpose must be protected in perpetuity.[xxxiv]

Part of the deduction for certain contributions of tangible personal property may be recaptured, or the amount of the deduction limited, if the donee organization sells the property within three years and does not certify its exempt use.[xxxv]

The Written Acknowledgment Rule

No deduction is allowed for any contribution of $250 or more unless the taxpayer substantiates the contribution by contemporaneous written acknowledgment of the contribution by the donee organization. This written acknowledgment rule is in addition to the other substantiation rules. For example, if an individual makes a contribution of publicly traded securities having a fair market value of $1,500, the donee organization will be required to furnish a written acknowledgment and the donor will be required to maintain specific information. The various requirements require the donor to maintain certain records and in some cases obtain a qualified appraisal to substantiate the fair market value of a charitable deduction.

The written acknowledgment from the donee must include the following information:

1) The amount of cash and a description (but not necessarily the value) of any property other than cash the donor transferred to the donee organization.

2) Whether or not the donee organization provided any goods or services in consideration for any of the cash or other property transferred to the donee organization.

3) A description and good faith estimate of the value of any goods and services referred to in item 2 above or, if such goods and services consist solely of intangible religious benefits, a statement to that effect.[xxxvi]

The term "intangible religious benefit" means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context (*e.g.*, admission to a religious ceremony). Such religious benefit may be disregarded for purposes of determining the amount of the deduction. This exception does not apply, for example, to tuition for education leading to a recognized degree, travel services, or consumer goods. However, *de minimis* tangible benefits furnished to donors that are incidental to a religious ceremony (such as wine) also generally may be disregarded.

For purposes of determining whether or not an acknowledgment is contemporaneous, the acknowledgment must be obtained by the taxpayer on or before the earlier of the date on which the taxpayer files a return for the taxable year in which the contribution was made or the due date (including extensions) for filing such return.[xxxvii]

The taxpayer need not substantiate contributions if they are reported by the donee organization on a return and in accordance with regulations that the Secretary may prescribe, and such reporting includes the information described above with respect to the contribution.[xxxviii] These regulations have not yet been released, and such information reporting by donees is optional.

Contributions of $500 or Less

If possible, a written receipt or letter from the charity showing the name of the organization, date and location of the contribution, and a reasonably detailed description of the property should be obtained for those contributions that are less than $250. However, as noted above, if the contribution is more than $250, a written acknowledgment must be obtained. It has not been clarified in what situations, if any, the written acknowledgment will be required to be attached to the tax return. However, in some situations, it may be helpful to attach this information to the income tax return on which the deduction is being claimed. In addition, a personal written record should be kept for each item of donated property. This record should show the following:

a) Name and address of the donee organization and the date and location of the contribution;

b) Reasonably detailed description of donated property;

c) Fair market value of property at the time the contribution was made (the term "fair market value" is discussed later), the method utilized in determining the fair market value and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser;

d) Cost or other tax basis of property;

e) Details of any terms or conditions attached to the gift, i.e. restrictions on use, etc.; and

f) Amount claimed as a deduction in current and prior years.[xxxix]

Contributions of More Than $500 But Not More Than $5,000

When the contribution of property, other than money, exceeds $500 but is $5,000 or less, the following additional requirements must be met.

a) Section A of IRS Form 8283 must be completed and attached to the donor's tax return.

b) The personal written record should include all six items referred to above and, in addition, two further items should be recorded:

1) Method of acquisition (i.e. purchased, inherited, etc.),

2) Date of acquisition or, if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed.[xl]

Contributions of More Than $5,000

If a deduction of more than $5,000 is claimed for either one noncash item, or a group of similar non-cash items, other than publicly traded securities, the donor must comply with the following three requirements:

a) Obtain a qualified appraisal for such property donated;

b) Attach a fully completed appraisal summary (Section B of IRS Form 8283) to the tax return on which the deduction for the contribution is first claimed or reported by the donor; and

c) Maintain records containing the information required for non-cash gifts of $500 or less of value, as described above.

The phrase "similar items of property" means property of the same category or type (whether or not donated to the same donee), such as stamp collections, coin collections, lithographs, paintings, photographs, books, nonpublicly securities, land, or buildings. For example, if a donor claims deductions of $2,000 for books given to college A, $25,000 for books given to college B, and $900 for books given to college C, the $5,000 threshold is exceeded. Therefore, the donor must obtain a qualified appraisal for the books and attach to her return three appraisal summaries for the donated books.

Contributions of Securities

The receipt from the donee should include the name of the issuer, the type of security, and whether or not such security is regularly traded on a stock exchange or in an over-the-counter market.[xli]

A qualified appraisal is not needed for a donation of publicly traded securities. These are securities for which market quotations are readily available on an established securities market (i.e., New York Stock Exchange, etc.). A donation of this type of property should be reported on Schedule B on IRS Form 8283 even when the value exceeds $5,000.

If a donation is made of non-publicly traded stock valued between $5,000 and $10,000 for which there is no readily available market quotation, then IRS Form 8283, Section B, should be completed and filed with the tax return. The average trading price must be recorded and adequate records should be maintained. However, no appraiser's certification is needed.[xlii]

A qualified appraisal and the completion of IRS Form 8283, Section B, is required for the donation of all other non-publicly traded securities other than stock (i.e., convertible bonds) valued at more than $5,000.

Qualified Appraisals – In General

A "qualified appraisal" is required when the value of noncash contributions (other than publicly traded securities) exceeds $5,000. This term means an appraisal document relating to an appraisal made not earlier than 60 days before the date of the contribution. It should be prepared, signed and dated by a "qualified appraiser" (as described below) in accordance with generally accepted appraisal standards, and it should contain the following items of information:

a) A description of the property detailed enough for a person unfamiliar with that kind of property to ascertain that the property that was

appraised is the property that was (or will be) contributed;

b) A description of the physical condition of the property;

c) The actual or anticipated contribution date;

d) Details of any terms or conditions attached to the gift;

e) The name, address, and taxpayer identification number of the qualified appraiser and, if relevant, his or her employer's name, address, and taxpayer identification number;

f) The qualified appraiser's qualifications. This will include items such as the appraiser's background, experience, education, and membership in professional appraisal associations;

g) A statement that the appraisal was prepared for income tax purposes;

h) The date (or dates) on which the property was appraised;

i) The appraised fair market value of the property on the date (or expected date) of contribution;

j) The valuation method used to determine fair market value;

k) The specific basis for the valuation such as any specific comparable sales transaction; and

1) A description of the fee arrangement between the donor and the appraiser. [xliii]

A fully completed appraisal summary must be prepared and attached to the donor's tax return when property, other than publicly traded stock, with a claimed value in excess of $5,000 is contributed. Section B of IRS Form 8283 is used for this purpose. A separate form is needed for each item of contributed property. However, if similar items are donated to one organization during the tax year, only one Form 8283 is necessary. If similar items are donated to more than one organization, then a separate form must be attached for each organization.

"Qualified appraiser" generally means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met certain minimum education and experience requirements, and (2) regularly performs appraisals for which the individual receives compensation.[xliv] An individual will not be treated as a qualified appraiser unless that individual demonstrates verifiable education and experience in valuing the type of property subject to the appraisal.[xlv]

He or she cannot be any of the following:

1) The donor of the property;

2) The recipient of the property;

3) A party to the transaction in which the property being donated was acquired, unless the property is being donated within two months of acquisition and the appraised value is not greater than its acquisition price;

4) Any person related to or employed by persons described in items 1, 2, or 3. This would include such individuals as an employee of an art dealer from whom the donor acquired a painting subsequently donated; the brother, sister, spouse, ancestor or lineal descendant of the donor, or a corporation where the donor owns more than 50 percent in value of the outstanding stock;

5) An appraiser who is regularly used by any person described in items 1, 2 or 3 and who does not perform a majority of his or her appraisals made during his or her taxable year for such persons. [xlvi]

Appraisal Receipt Date

A qualified appraisal should be received before the due date, including extensions, of the return on which the charitable contribution deduction is first claimed.

If the return on which the first claim occurs is an amended return, the appraisal should be received before the filing date. [xlvii]

Number of Qualified Appraisals

A separate qualified appraisal is needed for each item of property. However, only one qualified appraisal is needed for a group of "similar items of property" (as defined above) that are contributed in the same tax year. A detailed description of each item is still required within that one appraisal except that the appraiser may select any items whose aggregate value is appraised at $100 or less and provide a group description of such items.

Filing Procedures

The qualified appraisal normally does not need to be attached to the tax return. However, an appraisal summary must be attached. Qualified appraisals should be kept as long as may be relevant under the tax law. Generally, for a deduction claim of more than $500,000 for an item (or group of similar items), or where the total deduction for donated art is $20,000 or more, a complete copy of the qualified appraisal must be attached to the applicable tax return.

Appraisal Fees

A charitable contribution deduction is not allowed for fees paid for appraisals of donated property. However, the fee paid can be taken as a miscellaneous itemized deduction. The fee arrangement cannot be tied to a percentage of the appraised value of the property unless it is paid to a generally recognized non-profit association that regulates appraisers. Moreover, the fees should not benefit any individual or shareholder of the association and the appraiser should not be compensated for making the appraisal. Under no circumstances should the fee arrangement be based on a percentage of the amount that is allowed as a deduction by the IRS. [xlviii]

Fair Market Value

Fair market value is generally the price that would be paid in the open market in an arm's length transaction between a willing buyer and a willing seller with both having reasonable knowledge of all relevant facts. Depending on the property donated, this will involve a consideration of numerous factors. Sales of comparable properties, the replacement cost of a donated item, the opinion of informed and experienced experts are just some of the factors that could be considered in the calculation of fair market value.

Failure to Attach Appraisal Summary

In the event that a donor fails to attach to the donor's return a required appraisal summary, the IRS may request that the donor submit the appraisal summary within 90 days of the request. If such a request is made and the donor complies with the request within the 90-day period, the deduction will not be disallowed for failure to attach the appraisal summary, provided that the donor's failure to attach the appraisal summary was a good faith omission and the qualified appraisal and appraisal summary requirements are met (including the completion of the qualified appraisal prior to the appraisal receipt date as described above).[xlix]

FOOTNOTES

[xx] I.R.C. § 1221.

[xxi] Rev. Rul. 55-138, 1955-1 C.B. 223, modified by Rev. Rul. 68-69, 1968-1 C.B. 80; Rev. Rul. 55-275, 1955-1 C.B. 295 and Rev. Rul. 55-531, 1955-2 C.B. 520 Ltr. Rul. 8533006.

[xxii] I.R.C. § 1221.

[xxii] I.R.C. § 170(e)(1)(A).

[xxiv] I.R.C. § 170(e)(1)(B)(i).

[xxv] Rev. Rul. 55-138, 1955-1 C.B. 223, modified by Rev. Rul. 68-69 1968-1 C.B. 80, Rev. Rul. 55-275, 1955-1 C.B. 295 and Rev. Rul. 55-531, 1955-2 C.B. 520.

[xxvi] I.R.C. § 170(e).

[xxvii] I.R.C. § 170(e).

[xxviii] Palmer, 62 T.C. 684 (1974); Rev. Rul. 78-297, 1978-1 C.B. 83.

[xxix] Hudspeth v. U.S., 471 F.2d (8th Cir., 1972) Ferguson, 99-1 U.S.T.C. § 50,412 (9th Cir., 1999).

[xxx] I.R.C. § 1011(b).

[xxxi] Reg. § 1.1011-2(a)(1).

[xxxii] I.R.C. § 170(e)(1)(A); Reg. § 25.2512-6(a), Ex. 3.

[xxxiii] Reg. § 25.2512-6(a); Rev. Rul. 59-195, 1959-1 C.B. 18.

[xxxiv] Reg. § 1.170A-14.

[xxxv] I.R.C. §§ 170(e)(7) and 170(e)(1)(B)(i).

[xxxvi] I.R.C. § 170(f)(8)(B).

[xxxvii] I.R.C. § 170(f)(8)(C).

[xxxviii] I.R.C. § 170(f)(8)(D).

[xxxix] Reg. § 1.170A-13(b).

[xl] Reg. § 1.170A-13(c).

[xli] Reg. § 1.170A-13(b)(2)(ii)(C).

[xlii] Reg. § 1.170A-13(c)(2)(ii).

[xliii] Reg. § 1.170A-13(c)(3)(ii).

[xliv] I.R.C. § 170(f)(11)(E)(ii).

[xlv] I.R.C. § 170(f)(11)(E)(iii)(I).

[xlvi] Reg. § 1.170A-13(c)(5)(iv).

[xlvii] Reg. § 1.170A-13(c)(4)(iv)(B).

[xlviii] Reg. § 1.170A-13(c)(6).

[xlix] Reg. § 1.170A-13(c)(4)(iv)(H).

INTRODUCTION TO PART III: GIFTS OF CHARITABLE REMAINDER INTERESTS AND OTHER PARTIAL INTERESTS TO A PUBLIC CHARITY

There are several ways of making a contribution of property to a public charity (such as The Foundation) and claiming an income tax charitable contribution deduction, while retaining the right to receive an income stream or other benefit from the property for life or for a specified period of time. These include transfers to a "charitable remainder annuity trust," a "charitable remainder unitrust," or a gift of remainder interest in a personal residence or farm. In each case, the donor, or one or more beneficiaries selected by the donor, will receive benefits from the property transferred while at the same time the donor will provide a benefit to charity and reduce his or her income and estate taxes.

Each of the methods described in this chapter has specific requirements that must be met to achieve the desired tax benefits, and each contains features that permit an individual to select the form of arrangement that best suits his or her needs and objectives.

IN THIS SECTION, WE COVER:

CHARITABLE REMAINDER ANNUITY TRUSTS

A charitable remainder trust is a trust from which a specified sum (but not less than 5 percent nor more than 50 percent of the fair market value of all the assets placed in trust) is paid not less often than annually to the donor or to one or more other non-charitable beneficiaries.[l] Each recipient of the annuity must be alive at the creation of the trust, and the payments must not be for a period of more than 20 years or for the lifetime of the recipient or recipients.[li] At the termination of the annuity interest or interests, the remaining trust assets pass to or for the use of a designated charitable organization.[lii] The applicable rules do not permit additional transfers to a charitable remainder annuity trust after the trust has been established.[liii]

Example 1:

Mr. A transfers from his separate property, assets worth $100,000 to a trustee (who could be Mr. A himself), with directions to pay $5,000 annually, first to Mr. A, and after his death to Mr. A's wife, if she survives him. Upon the death of the second to die of Mr. A and his wife, the trustee will distribute the assets remaining in the trust to The Foundation.

Assuming the trust satisfies all of the requirements imposed by the Treasury Regulations, it will be a qualified charitable remainder annuity trust, and will be exempt from federal income tax.[liv] Mr. A will be able to claim an immediate income tax charitable contribution deduction equal to the present value of the charitable remainder interest,[lv] determined under appropriate actuarial tables.[lvi] (These tables are revised monthly, and so the exact amount of the deduction depends on the date the trust is established.) In the above example, if the transfer had occurred in March of 2011 when Mr. A was age 70 and his wife was age 68 and payments were to be made annually, Mr. A would have been entitled to a charitable deduction of approximately $29,000 for federal income tax purposes, subject to the usual contribution limits (and permitted carryover).

The recipient of the annuity is taxed as he or she receives distributions from the trust.[lvii] Although the value of the trust is includable in the donor's gross estate for federal estate tax purposes, by reason of his retained right to payments,[lviii] his estate will obtain an estate tax charitable contribution deduction equal to the actuarial value of the charity's remainder interest as of the donor's death.[lix] (If the trust ends on the donor's death, this would be 100 percent.)

Example 2:

Assume the same facts in the above example except that Mr. A is not married, so that the $5,000 annuity is to be paid only during his lifetime and, upon his death, the trustee is to distribute the principal outright to The Foundation. In that case, since Mr. A is age 70 in March of 2011 when the trust is established, he will be entitled to a federal income tax deduction for 2011 of approximately $45,000. While the value of the property on the date of the donor's death will be included in his gross estate for federal estate tax purposes, the same amount will also be deductible for federal estate tax purposes as a charitable deduction.

In determining which form of charitable remainder trust to use, it should be noted that a charitable remainder unitrust is likely to provide a greater return for a beneficiary in a period of inflation, while a charitable remainder annuity trust is more likely to provide the security of level payments to the beneficiary.

Elimination of Capital Gain

One of the tax advantages of a charitable remainder trust is that if appreciated property is transferred to the charitable remainder trust and later sold by the charitable remainder trust, the capital gain which would have been realized if the property had been sold by the donor is eliminated.[lxiv] This is particularly attractive if the donor is "locked in" to real property or securities with a low yield and a low income tax basis. Thus, if in any of the preceding examples, the donor transferred property worth $100,000 with an income tax basis of $10,000, the donor's payments from the annuity trust, unitrust or would be based on the full market value of the property transferred without reduction for the gain inherent in the property.

Example:

Assume that Mr. D, whose combined federal and California marginal capital gain tax rate is 28 percent, transfers to a charitable remainder unitrust unimproved real property with a tax basis of $10,000 and a fair market value of $100,000. If Mr. D had sold the property and reinvested the proceeds, he would have paid $25,200 in capital gain tax (28 percent x $90,000) and had $74,800 left to invest. Since the charitable remainder unitrust is exempt from tax, it can, if it is deemed appropriate, sell the real property without payment of tax and Mr. D's unitrust payments will be based on the full $100,000 of sales proceeds.

GIFTS OF REMAINDER INTEREST IN PERSONAL RESIDENCE OR FARM

In addition to the trust arrangements described above, an income tax charitable contribution deduction is available for a gift by a donor to a charity of a remainder interest in his or her personal residence or farm.[lxvi] For example, a donor can give his or her home (or a percentage of his or her home) to charity, but reserve the right to live in the home until the death of the donor (or the death of the survivor of the donor and the donor's spouse). Under this type of arrangement, the donor is generally responsible for the costs of maintaining the residence (for example, insurance, real property taxes, repairs, etc.)

This arrangement may be attractive to a donor who wishes to secure a present income tax deduction for a gift to charity but needs to preserve liquid assets for future security.

Example:

Mrs. E, who is age 73, has an estate consisting of cash and securities with a value of $700,000 and a home with a market value of $750,000. In April of 2011, she transfers the home to The Foundation and reserves the lifetime occupancy and possession of the home. Depending upon the relative values of the residence and the land and the expected depreciation of the residence during Mrs. E's lifetime, Mrs. E may be eligible to claim an income tax deduction in excess of $400,000 as a result of this gift. On her death, the home will belong to The Foundation and, although it will be included in her estate for estate tax purposes, her estate will be entitled to an estate tax charitable deduction for the full value of the home.

CHARITABLE LEAD TRUSTS

The previous examples all involve delayed gifts to charity, with the grantor or other non-charitable beneficiary receiving benefits immediately following the transfer. A charitable lead trust, as the name implies, has the charitable interest at the beginning, with the trust assets passing to or in trust for a child, grandchild or other non-charitable beneficiary upon the expiration of a specified term of years.

The donor who establishes a charitable lead trust receives one or the other (but not both) of the following income tax benefits, depending on the terms of the trust:

1) An immediate federal income tax deduction for the commuted value of the income interest given to charity; or
2) The ability to exclude from income the payments made to charity during the term of the trust.

If income paid to charity is excluded from income, this is, in effect, a deductible charitable contribution of the income without regard to the usual contribution limits. If, on the other hand, the donor receives an immediate lump sum deduction, he or she must thereafter report the income paid to charity without a charitable deduction for it.

If the income interest to charity is to be free of federal gift tax, and is to qualify for the federal income tax charitable contribution deduction, it must be in the form of an annuity trust or a uni-trust, except that a charity receives the annuity or percentage payments and the remainder passes to one or more non-charitable beneficiaries at the end of the trust term.[lxvii] (There is no requirement that the annual payments to charity be at least 5 percent or less than 50 percent.) Such a trust may have benefits for a donor who desires to fund his or her charitable contributions and also reduce gift, estate or generation-skipping transfer taxes that might otherwise be imposed on transfers of property to children, grandchildren or other family members.

Example:

Mr. F is a widower, age 60, who desires to fund payments to The Foundation over the next 10 years and also transfer substantial property to his daughter. In April 2011, Mr. F transferred $500,000 worth of property to a charitable lead trust with a provision to pay $40,000 (i.e., 8 percent of the initial value of the trust) per year to The Foundation for 10 years, at the end of which time the property is to be distributed, free of trust, to his daughter. The trust terms are such that there is no current income tax deduction, but the trust income is excluded from Mr. F's own income, thus making Mr. F's charitable deduction percentage limitations fully available for other charitable gifts. For federal gift tax purposes, Mr. F will be able to treat his gift as being about 69 percent to charity (valued at approximately $345,000) and the balance to his daughter.

OTHER SPLIT INTEREST GIFTS

Deductible Gifts

In addition to the arrangements described above, an income tax deduction is available for a gift by a donor of an undivided portion of his entire interest in property (e.g., an undivided one-half interest in a building or tract of land).[lxviii]

Non-Deductible Gifts

Types of transfers of partial interests in property for which a deduction is not allowed under the law include:

a) A transfer in trust other than by one of the methods described above.

b) A transfer of the use of property which does not constitute an undivided portion of the donor's entire interest in the property (for example, a grant to a charitable organization to use, on a rent-free basis, certain space in a building owned by the donor).

c) The transfer of a remainder interest in property other than a personal residence or farm (such as a painting or rental real estate).[lxix]

FOOTNOTES

[l] I.R.C. § 664(d)(1)(A).

[li] Id.

[lii] I.R.C. § 664(d)(1)(C).

[liii] Reg. § 1.664-2(b).

[liv] I.R.C. § 664(c).

[lv] I.R.C. § 170(f)(2)(A).

[lvi] I.R.C. § 7520(a).

[lvii] I.R.C. § 664(b).

[lviii] I.R.C. § 2036(a)(1).

[lix] I.R.C. § 2055(e)(2)(A).

[lx] I.R.C. § 664(d)(2)(A).

[lxi] I.R.C. § 664(d)(3)(A).

[lxii] I.R.C. § 664(d)(3)(B).

[lxiii] Reg. § 1.664-3(b).

[lxiv] I.R.C. § 664(c).

[lxv] Reg. § 1.170A-1(d).

[lxvi] I.R.C. § 170(f)(3)(B)(i).

[lxvii] I.R.C. § 2522(c)(2)(B).

[lxviii] I.R.C. § 170(f)(3)(B)(ii).

[lxix] Reg. § 1.170A-5(b), Example (1).

INTRODUCTION TO PART IV: PRIVATE FOUNDATIONS AND THEIR ALTERNATIVES

Under the tax law, charitable organizations are generally divided into two categories: private foundations and public charities. All charitable organizations are "private foundations" unless they qualify as "public charities." The Foundation has established its classification as a "public charity." "Private Foundations" are subject to a number of restrictions, taxes, and increased costs of operation which may adversely affect the donor's long-range charitable purposes.

If a charitable trust or foundation cannot qualify as a "public charity," its managers must decide whether to continue as a private foundation or to employ one of the alternatives available. As described in Parts I and II hereof, the rules regarding deducting gifts to private foundations are not nearly as favorable as the rules for deducting gifts to public charities This Part will describe the problems facing private foundations and describe two different methods whereby the Foundation may help resolve these problems. The two methods are 1) a Donor Advised Fund, and 2) a Family Support Organization. In addition to the discussion to follow, comparison of the operating features of each method is included at the end of this Part.

IN THIS SECTION, WE COVER:

RESTRICTIONS ON PRIVATE FOUNDATIONS

The following is a summary of some of the principal requirements and restrictions that apply to private foundations.

Excise Tax on Investment Income

An excise tax of either 1 percent (if sufficient charitable distributions are made) or 2 percent is imposed for each taxable year on the net investment income of private foundations that are not exempt operating foundations.[lxxi] Net investment income is gross investment income, plus net capital gains, minus certain deductions related to the production of gross investment income.[lxxii] Gross investment income includes interest, dividends, rents, and payments with respect to securities loans and royalties.[lxxiii] The excise tax reduces the funds which private foundations can employ for charitable purposes.

Tax on Failure to Distribute Minimum Amounts

Non-operating private foundations must make annual charitable distributions in an amount equal to at least 5 percent of the net aggregate fair market value of their assets — generally within one year after the end of a given year. [lxxiv] If a foundation fails to meet the payout requirements, it is subject to an initial 30 percent penalty tax on the unpaid portion of the required payout.[lxxv] The foundation may be required to pay a second level tax equal to 100 percent of the amount remaining undistributed if the foundation does not make up the required distributions.[lxxvi]

Excess Business Holdings

Complex rules have been established to limit a private foundation's ownership of a business enterprise that is not functionally related to the foundation's charitable operations. For example, if the private foundation owns more than 2 percent of the stock of a corporation, it must determine whether the aggregate holdings of the private foundation and "disqualified persons" exceed 20 percent. [lxxvii] The maximum holding can be increased to 35 percent when disqualified persons do not have effective control. [lxxviii] If the percentage limitations on such holdings are exceeded, the foundation must divest itself of the excess holdings within designated time periods.[lxxix] A foundation that fails to comply with the divestiture requirements is subject to a first level tax of 10 percent of the value of its excess business holdings, subject to relief in limited situations.[lxxx] The foundation may be required to pay a second level tax equal to 200 percent of the excess business holdings if the foundation does not correct the situation within the correction period. [lxxxi]

Taxable Expenditures

Private foundations have limitations on certain kinds of activities, such as carrying on propaganda, attempting to influence legislation, making grants to individuals (except for certain types of scholarships approved in advance by the IRS), and making distributions to other organizations.[lxxxii] Private foundations are also required to exercise "expenditure responsibility" over all grants to all donee organizations other than to "public charities". [lxxxiii] A private foundation that makes an expenditure contrary to these rules is subject to a first level tax of 20 percent of the amount improperly paid. [lxxxiv] The foundation may be required to pay a second level tax equal to 100 percent of the expenditure if the foundation does not correct the error within the correction period. [lxxxv] Both a 5 percent (not to exceed $10,000) and a 50 percent (not to exceed $20,000) penalty may be imposed on foundation managers who agree to the improper payment or fail to cause the correction.[lxxxvi] The penalties may be abated in certain circumstances.[lxxxvii]

Self-Dealing

Severe penalties are imposed under the Internal Revenue Code against persons who engage in acts of self-dealing with or on behalf of private foundations. The rules on self-dealing prohibit virtually all transactions between a person who has created a foundation (or members of his or her family) and the foundation itself. [lxxxviii]
The Internal Revenue Code broadly defines a class of persons designated as "disqualified persons", [lxxxix] and specifically prohibits certain dealings between a private foundation and such persons. A first level tax of 10 percent of the amount of money or property involved in the self-dealing transaction is imposed against a "disqualified person" who has engaged in an act of self-dealing. [xc] This tax is imposed against a self-dealer even though the self-dealer had no knowledge at the time of the act that such act constituted self-dealing.[xci]

Disqualified persons may be required to pay a second level tax equal to 200 percent of the amount involved in the transaction if the disqualified person does not correct the transaction within the corrective period.[xcii] A first level tax of 5 percent of the amount involved is also imposed on a foundation manager who has willfully participated in the prohibited act on behalf of the foundation. [xciii] The foundation manager may be required to pay a second level tax equal to 50 percent of the amount involved if the foundation manager refuses to correct the wrongful act of self-dealing.[xciv]
The broad sweep of the rules on self-dealing creates serious problems for managers of private foundations. Penalties will not apply to a foundation manager who does not knowingly violate the rules,[xcv] but reliance on the advice of counsel expressed in a reasoned legal opinion may be necessary to protect against such penalties.[xcvi]

DONOR ADVISED FUNDS (DAFS)

Subject to certain exceptions, a Donor Advised Fund is (1) a fund or account owned and controlled by a "sponsoring organization" (such as The Foundation), (2) which is separately identified by reference to contributions of the donor or donors, and (3) from which the donor (or a person appointed or designated by the donor) has or reasonably expects to have advisory privileges over the distribution and/or investment of the assets.[xcvii] All three prongs of the definition must be met in order for a fund or account to be treated as a donor-advised fund.

A Donor Advised Fund involves the transfer of money or other property to The Foundation under an agreement whereby the donor's contribution is added to a Donor Advised Fund established in his or her name or any other name the donor designates. The Foundation will consider the donor's recommendations for grantmaking from the Donor Advised Fund. Although such recommendations are advisory only, The Foundation will generally follow the donor's recommendations. However, The Foundation is required by law to maintain the ultimate power to determine the destination of the funds. Each gift from the fund is identified with the name of the donor or in accordance with the donor's instructions. A model agreement for establishing a Donor Advised Fund is available at **www.jewishfoundationla.org** or by calling 323.761.8704.

Contributions to a Donor Advised Fund are treated as contributions to a public charity. Thus, contributions to The Foundation for this purpose are entitled to the maximum charitable contribution deduction allowable, which is often in excess of the deductions allowable for a contribution to a private foundation. A Donor Advised Fund also offers other advantages:

- The fund may be established at The Foundation with cash, securities or other assets with a minimum initial donation of $5,000;
- Funds of $50,000 or more at The Foundation may be invested in several Fidelity mutual fund options, select Israel Bonds, and The Foundation's Strategic Return Fund, which consists of a diversified pool of mutual funds and exchange-traded funds;
- Funds of $500,000 or more at The Foundation may opt for a Separately Managed Account (SMA);
- Donors may donate when it is advantageous for them for tax or other purposes and gain the flexibility to make grant recommendations in the months and years ahead;
- The Foundation handles all administrative responsibilities of the fund;
- The Foundation offers online access for grant recommendations and account statements;
- Foundation donors may involve their family in philanthropy, to any degree they choose, and may recommend a succession plan for the fund;
- Foundation donors may recommend grants of $100 or more to any qualified charitable organization, Jewish or secular; locally, nationally, or in Israel;
- The fund's name is only made public with the donor's consent;
- Fund assets grow tax-free, and are not subject to the 2 (or 1) percent tax on net investment income of private non-operating foundations; and
- The fund is not subject to certain other restrictions on a private foundation, such as a 5% minimum annual distribution requirement.

The Foundation and fund management are subject to excise taxes for "taxable distributions" (similar to taxable expenditures as discussed above under Private Foundations) from a Donor Advised Fund that do not accomplish a charitable purpose or for certain distributions where expenditure responsibility is not exercised.[xcviii] Donors, donor advisors, and related persons are also subject to excise taxes if they receive more than an incidental benefit from a Donor Advised Fund.[xcix] Under the provision, any grant, loan, compensation, or other similar payment from a Donor Advised Fund to a person that with respect to such fund is a donor, donor advisor, or a person related to a donor or donor advisor is automatically treated as an excess benefit transaction, with the entire amount paid to any such person treated as the amount of the excess benefit.[c] Finally, Donor Advised Funds are subject to the excess business holdings rules discussed above under "Private Foundations."[ci]

The establishment and use of a Donor Advised Fund may be illustrated by the following example:

Example:

Ms. J holds shares in the publicly owned X Corporation that have increased in value since the date of purchase. Ms. J wants to support many charitable organizations, obtain a charitable deduction, and avoid a capital gain tax. Ms. J contributes $500,000 of X Corporation stock to The Foundation to establish the "The J Family Donor Advised Fund." The contribution produces a deduction of $500,000 for Ms. J's immediate benefit (subject to the limitations previously described) and avoids the capital gain tax on the appreciation in value. Ms. J has the advisory privileges as to investment recommendations, grant recommendations and a succession plan for the J Family Donor Advised Fund at The Foundation.

SUPPORTING ORGANIZATIONS/ FAMILY SUPPORT ORGANIZATIONS

Supporting organizations are described in Section 509(a)(3) of the Internal Revenue Code and are sometimes called "family support organizations," "affiliated foundations," "supporting foundations," or "Section 509(a)(3) Organizations." A supporting organization is a separate nonprofit charitable corporation or trust that is generally supported by an individual, family, corporation or other relatively small group. Supporting organizations qualify as public charities because they are required to have a certain relationship with one or more other public charities such as The Foundation and, therefore, qualify as public charities.[cii]

A supporting organization has two principal distinguishing characteristics. First, it is a separate entity with its own identity and name (selected by the donor). Second, although the founders cannot control the supporting organization, they can generally appoint a minority of the directors.[ciii]

Although there are many situations when a supporting organization will be an appropriate alternative to a direct gift to a public charity or the creation of a separate private foundation, the following are the more common circumstances for the creation of a supporting organization:

- Where a donor wants his or her family to play a direct and continuing role in the programs of a charitable fund, but does not want the responsibilities of management and reporting or the restrictions applicable to a private foundation.
- Private foundations cannot hold substantial interests in business entities, but a supporting organization may hold such interests. Transferring business interests to a supporting organization allows the donor and his or her family some degree of control while avoiding the requirement of divesture that is applicable to business interests held in private foundations.
- A supporting organization does not pay an excise tax (1 percent or 2 percent) on its net investment income, so a private foundation may convert to a supporting organization to avoid that tax on a transaction that may result in substantial taxable income that would be subject to the private foundation excise tax.
- Contributions to a supporting organization are treated as contributions to a public charity, because the supporting organization has the tax status of a public charity. As a result, a donor may claim the maximum tax benefits for a gift to a public charity.
- Other forms of public charities may be created by individuals or small groups, but they generally require levels of public support that are extremely difficult to achieve. A supporting organization does not require any level of public support; its public charity status is based upon its relationship with one or more other public charities.

In general, to qualify as a supporting organization, an organization must be organized and operated to benefit and support one or more public charities, i.e. the "supported organizations". The supporting organization must not be controlled by disqualified persons. Generally speaking, a disqualified person is any substantial contributor, certain family members of substantial contributors and certain entities owned or controlled by substantial contributors.

There are three types of supporting organizations, normally denominated as Type I, Type II and Type III. Type III supporting organizations are further subdivided into two types, a functionally integrated organization and a non-functionally integrated organization. The differences among the various types generally relate to the degree of control that the supported organization exercises over the supporting organization:

- A Type I supporting organization must be "operated, supervised or controlled by" the supported organization (or organizations). This means that not less than a majority of the board of directors or trustees of the supporting organization must be appointed or elected by one or more of the supported organizations. The typical supporting organization of the Foundation is a Type I supporting organization.
- A Type II supporting organization must be "supervised or controlled in connection with" one or more supported organizations. The relationship between a Type II supporting organization and the supported organizations is similar to a brother-sister relationship in the corporate context. A majority of the board of directors or trustees of the supporting organization also must control the supported organization.
- Historically, a Type III supporting organization has been subject to the least amount of control by the supported organizations and, therefore, in the perception of the Internal Revenue Service, more prone to abuse. As a result of this perception, the rules relating to supporting organizations, and especially those relating to Type III supporting organizations, were substantially modified by Congress in 2006. One modification was to divide Type III supporting organizations into two classes, a "functionally integrated supporting organization" and all other Type III supporting organizations.

A functionally integrated Type III supporting organization provides support by carrying on activities that normally would be carried on by the supported organization. For example, an organization that provides the printing facilities for a university is considered a functionally integrated supporting organization because, but for the existence of the supporting organization, the university would have performed that function itself. A supporting organization that simply makes distributions to a supported organization is not functionally integrated even though the distributions are used by the supported organization for its programs and other charitable purposes. The various required relationships between the supporting organization and the supported organizations for Type III supporting organizations are very complex and are beyond the scope of this Handbook. Donors who wish to create supporting organizations, and especially a Type III supporting organization, should consult competent counsel who have experience in this area.

The 2006 changes to the law significantly altered both the governance and oversight requirements imposed on Type III supporting organizations in order to curb perceived abuses:

1. All public charities [civ] (including supporting organizations) are subject to the excess benefit transaction rules. An excess benefit generally is a benefit paid to a related person in an amount that exceeds fair market value. For example, paying excessive compensation to the executive director of a public charity is an excess benefit transaction that subjects the organization and the director to penalties. The new rules relating to certain excess benefit transactions are harsher with respect to supporting organizations than they are with respect to public charities in general. For example, any grant, loan, payment of compensation or similar payment (such as an expense reimbursement) by a supporting organization to a substantial contributor or to a related person is automatically an excess benefit transaction that triggers the penalty provisions of the law even if the payment is reasonable in amount. If the payment is a loan, the penalty provisions also extend to loans to persons who are in a position to exercise substantial influence over the supporting organization or to any related person during the 5-year period ending on the date of the loan. For example, a loan to a director or trustee falls into this category.

2. All supporting organizations now must file Form 990 with the Internal Revenue Service each year. The return must list the supported organizations, disclose the type of supporting organization that it is, and certify that it is not controlled by disqualified persons.

3. Prior to the 2006 law changes, a non-operating private foundation could make a grant to any public charity and have that grant "count" as a qualifying distribution that satisfied the requirement that private foundations distribute at least 5% of their assets each year. Pursuant to the 2006 change, a grant from a non-operating private foundation will not be a qualifying distribution if the grant is made to a Type III supporting organization that is not functionally integrated or to any supporting organization if a disqualified person with respect to the private foundation controls either the supporting or supported organization. If the impermissible distribution is not a qualifying distribution, it will also be a taxable expenditure which subjects the private non-operating foundation and its board members/trustees to excise taxes unless the non-operating foundation exercises expenditure responsibility with respect to the distribution.

Because the rules relating to distributions from non-operating private foundations to supporting organizations are complex, distributions should not be made without the advice of experienced counsel.

A primer for establishing a Family Support Organization is included in the Appendix of this *Handbook*.

COMPARISON OF CHARITABLE ORGANIZATIONS

	PRIVATE FOUNDATION	SUPPORTING ORGANIZATION (SO)	DONOR ADVISED FUND
Source	• Any 501(c)(3) organization other than one described in Internal Revenue Code §§ 509(a)(1) through (a)(4), inclusive	• Internal Revenue Code §509(a)(3)	• Internal Revenue Code §4966(d)
Structure of organization & formalities	• Separate nonprofit trust or corporation controlled by its creator(s)	• Separate nonprofit trust or corporation created by each donor • SO board must be controlled by The Foundation	• Separate fund (bookkeeping account) of The Foundation, often bearing donor's name • Established by simple letter agreement • Not a separate entity
Investment of funds	• Controlled by creator(s), subject to rules and guidelines intended to ensure foundations do not put their investments in jeopardy through financial speculation (IRC §4944)	• SO Board of Directors controls investments	• Controlled by The Foundation • Cannot require The Foundation to retain specific assets or employ specific bank or investment counselor
Donor "control" of distributions to charitable organizations	• Creator(s) control grants and must make annual distributions equal to a minimum of 5 percent of investment assets	• Donor names charitable organizations (or class) in articles, but SO Board of Directors controls amount and timing of periodic distributions	• Donor may recommend charitable recipients, but The Foundation has final control • The Foundation must set criteria for gifts, and avoid acting like a "rubber stamp"

COMPARISON OF CHARITABLE ORGANIZATIONS

	PRIVATE FOUNDATION	SUPPORTING ORGANIZATION (SO)	DONOR ADVISED FUND
Minimum annual distribution requirement	• Must distribute at least 5% of assets each year	• Non-functionally integrated Type III SOs may be subject to minimum 5% distribution rule[cv]	None
Termination	• May be perpetual • If dissolved, funds must be distributed to qualified charitable organizations	• May be perpetual • If dissolved, funds must be distributed to public charities	• Balance to Permanent Endowment Fund of The Foundation depending on successor agreements
Tax classification	• Private foundation	• Public charity • Non-functionally integrated Type III SOs are treated as private foundations for certain purposes	• Public charity
Tax benefits to donors	Donor may deduct: • Full amt. of cash contributions up to 30% of adjusted gross income (AGI) • Cost basis of long-term capital gain property up to 20% of AGI • Cost basis of Ordinary Income Property and Short-Term Capital Gain Property up to 30% of AGI	Donor may deduct: • Full amt. of cash contributions up to 50% of AGI • Full fair market value (FMV) of long-term capital gain (LTCG) property up to 30% of AGI [50% if election is made to reduce deduction by 100% of potential LTCG, Section 170 (b)(1)(c)];	• Same as SO

COMPARISON OF CHARITABLE ORGANIZATIONS

	PRIVATE FOUNDATION	SUPPORTING ORGANIZATION (SO)	DONOR ADVISED FUND
Tax benefits to donors (cont.)	• Cost basis of Tangible Personal Property (if use by charity is unrelated to its exempt purposes or functions) up to 20% of AGI • Excess contributions may be carried forward five years, subject to identical percentage limitations in future years	• FMV less 100% of unrealized appreciation of Ordinary Income Property, Short-Term Capital Gain Property or Tangible Personal Property (if use by charity is unrelated to its exempt purposes or functions) up to 50% of AGI; • Excess contributions may be carried forward five years	• Same as SO
Private foundation restrictions	• Subject to private foundation restrictions of IRC§§ 4940-4945	• Not subject to private foundation restrictions of IRC§§ 4940-4945 • Non-functionally integrated Type III SOs are subject to excise taxes on excess business holdings	• Subject to excise taxes on certain taxable distributions and excess business holdings
Federal tax on net investment income	• 2% (1% under certain circumstances)	None	None

COMPARISON OF CHARITABLE ORGANIZATIONS

	PRIVATE FOUNDATION	SUPPORTING ORGANIZATION (SO)	DONOR ADVISED FUND
Minimum starting balance	• No minimum	• $2.5 million at The Foundation	• $5,000 at The Foundation
Minimum grant amount	• No minimum	• $1,000 at The Foundation	• $100 at The Foundation
Start-up costs	• Substantial legal, accounting and tax qualification costs	• Variable cost to donor	• No cost to donor
Record keeping	• Donor arranges for record keeping	• The Foundation provides record keeping	• The Foundation provides record keeping
Tax filings and privacy	• Donor arranges for required federal and state filings that are publicly available	• The Foundation files required federal and state filings that are publicly available	• No separate filing • Fund has total privacy

FOOTNOTES

[lxx] I.R.C. § 4940(e).

[lxxi] I.R.C. § 4940(a).

[lxiix] I.R.C. § 4940(c)(1).

[lxxiii] I.R.C. § 4940(c)(2).

[lxxiv] See generally I.R.C. § 4942.

[lxxv] I.R.C. § 4942(a).

[lxxvi] I.R.C. § 4942(b).

[lxxvii] I.R.C. § 4943(c)(2)(A).

[lxxviii] I.R.C. § 4943(c)(2)(B).

[lxxix] I.R.C. §§ 4943(c)(4), (5), (6), and (7).

[lxxx] I.R.C. § 4943(a).

[lxxxii] I.R.C. § 4943(b). The term "correction period" refers to the various time periods specified in I.R.C. §§ 4943(c)(4), (5), (6), and (7). See note 10, supra.

[lxxxii] I.R.C. § 4945(d).

[lxxxiii] I.R.C. § 4945(d)(4)(B); see also I.R.C. § 4945(h).

[lxxxiv] I.R.C. § 4945(a)(1).

[lxxxv] I.R.C. § 4945(b)(1).

[lxxxvi] I.R.C. § 4945(a)(2) and (b)(2).

[lxxxvii] See Reg. § 53.4945-1(a)(2)(v) and (vi).

[lxxxviii] I.R.C. § 4941(d).

[lxxxix] I.R.C. § 4946(a).

[xc] I.R.C. § 4941(a)(1).

[xci] Reg. § 53.4941(a)-1(a)(1).

[xcii] I.R.C. § 4941(b)(1).

[xciii] I.R.C. § 4941(a)(2).

[xciv] I.R.C. § 4941(b)(2).

[xcv] Reg. § 53.4941(a)-1(b)(1)(ii).

[xcvi] See Reg. § 53.4941(a)-1(b)(3) and (6).

[xcvii] I.R.C. § 4966(d)(2).

[xcviii] I.R.C. § 4966(a).

[xcix] I.R.C. § 4967(a).

[c] I.R.C. § 4958(c)(2).

[ci] I.R.C. § 4943(e).

[cii] I.R.C. § 509(a)(3).

[ciii] I.R.C. § 509(a)(3)(C).

[civ] See generally I.R.C. § 4958.

[cv] See Prop. Reg. § 1.509(a)-4(i)(5)(i).

IRS RULING AS TO EXEMPT STATUS OF JEWISH COMMUNITY FOUNDATION

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
P. O. BOX 231
LOS ANGELES, CALIFORNIA 90053

July 16, 1965

IN REPLY REFER TO
Form L-178
Code 414:RAJ
LA-EO-65-559

PURPOSE	
Charitable	
ADDRESS INQUIRIES & FILE RETURNS WITH DISTRICT DIRECTOR OF INTERNAL REVENUE	
Los Angeles	
FORM 990-A REQUIRED	ACCOUNTING PERIOD ENDING
[X] YES [ ] NO	Aug. 31

Jewish Community Foundation of the Jewish
Federation-Council of Greater Los Angeles
590 North Vermont Avenue
Los Angeles, California 90004

Gentlemen:

On the basis of your stated purposes and the understanding that your operations will continue as evidenced to date or will conform to those proposed in your ruling application, we have concluded that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Any changes in operation from those described, or in your character or purposes, must be reported immediately to your District Director for consideration of their effect upon your exempt status. You must also report any change in your name or address.

You are not required to file Federal income tax returns so long as you retain an exempt status, unless you are subject to the tax on unrelated business income imposed by section 511 of the Code, in which event you are required to file Form 990-T. Our determination as to your liability for filing the annual information return, Form 990-A, is set forth above. That return, if required, must be filed on or before the 15th day of the fifth month after the close of your annual accounting period indicated above.

Contributions made to you are deductible by donors as provided in section 170 of the Code. Bequests, legacies, devises, transfers or gifts to or for your use are deductible for Federal estate and gift tax purposes under the provisions of section 2055, 2106 and 2522 of the Code.

You are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless you file a waiver of exemption certificate as provided in such act. You are not liable for the tax imposed under the Federal Unemployment Tax Act. Inquiries about the waiver of exemption certificate for social security taxes should be addressed to this office, as should any questions concerning excise, employment or other Federal taxes.

This is a determination letter.

Very truly yours,

R. A. Riddell

R. A. Riddell
District Director

Your tax-exempt status is predicated upon the understanding that your funds are distributed solely for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals or to the Federal Government or to a State or local government for a public purpose. Evidence to substantiate the exempt nature of your distributions should, therefore, be maintained in such manner as to satisfy these requirements.

FORM L-178 (6-64)

IRS RULING APPROVING TRANSFER OF PROPERTY BY AN INDIVIDUAL TO ESTABLISH A PHILANTHROPIC FUND

Department of the Treasury

Internal Revenue Service
Washington, DC 20224

Date: APR 1 3 1971

In reply refer to: T:MS:EO:R:4

Jewish Community Foundation of the
Jewish Federation-Council of
Greater Los Angeles
Martin and Rose Ruderman
c/o Jewish Community Foundation of
the Jewish Federation-Council of
Greater Los Angeles
590 North Vermont Avenue
Los Angeles, California 90004
E.I.N. 956111928

Gentlemen:

This is in reply to your joint request of January 21, 1971, for a ruling regarding the status of the Jewish Community Foundation of the Jewish Federation-Council of Greater Los Angeles, under section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1969, and the effect of a gift to the said organization by Martin and Rose Ruderman in the manner described below.

Martin and Rose Ruderman propose to make a contribution to the organization for which it will establish a fund to be known as the Martin and Rose Ruderman Philanthropic Fund, over which the organization will have absolute discretion and control as to investment and distribution of income and principal. From time to time, additional gifts may be made to the organization for the purpose of adding to the fund. Martin and Rose Ruderman may from time to time submit names of organizations to which they recommended that distributions be made. These recommendations shall be solely advisory and may be accepted or rejected by the organization using reasonable standards and guidelines. It is expected that this fund will be one of many such funds that the organization will establish.

In a ruling of December 27, 1967, we determined that the Jewish Community Foundation of the Jewish Federation-Council of Greater Los Angeles, is an organization described in section 170(b)(1)(A)(vi) of the Code. This ruling is still in effect. However, due to the

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Re: Jewish Community Foundation of the Jewish
Federation-Council of Greater Los Angeles

fact that section 170(b)(1)(A) of the Code was amended by the Tax Reform Act of 1969, for taxable years beginning after December 31, 1969, an individual may deduct contributions to organizations described in section 170(b)(1)(A) of the Code, to the extent that the aggregate of such contributions does not exceed 50 percent of his contribution base.

Accordingly, it is held that a contribution to the Jewish Community Foundation of the Jewish Federation-Council of Greater Los Angeles, in the manner described, is a gift which will not affect its status under section 170(b)(1)(A)(vi) of the Code or result in a separate entity for tax purposes, and will entitle Martin and Rose Ruderman to the fifty percent deduction provided in section 170(b)(1)(A) of the Code.

We are advising the District Director, Los Angeles, California, of this action.

Very truly yours,

J. A. Tedesco

Chief, Rulings Section
Exempt Organizations Branch

IRS RULING THAT JEWISH COMMUNITY FOUNDATION IS NOT A PRIVATE FOUNDATION

Department of the Treasury

Internal Revenue Service
Washington, DC 20224

Date: APR 13 1971

In reply refer to:
T:MS:EO:R:4

The Jewish Community Foundation
of the Jewish Federation
Council of Greater Los Angeles
590 North Vermont Street
Los Angeles, California 90004

E.I.N. 6111928

Gentlemen:

This is in reply to your request of December 21, 1970, for a ruling regarding the effect of a transfer of the funds of the Louis A. Chase Trust Fund to yourself under section 507 of the Internal Revenue Code of 1954, as amended by the Tax Reform Act of 1969. You also requested advice as to whether the transfer would establish a separate taxpayer for tax purposes. The request was submitted in your behalf by Messrs. John R. Cohan, Kenneth R. Goldman, and Louis A. Chase.

The Louis A. Chase Trust Fund is an irrevocable charitable trust which was created in 1966 by Louis A. Chase. Under the terms of the Trust, you as trustee have complete investment power over the Trust assets, and must distribute the income of the Trust in accordance with the written direction of Louis A. Chase or Rose Chase. Now, Louis A. Chase will appoint irrevocably to you, all the Trust assets. These assets will be used by you in carrying out your charitable purposes.

You will establish a fund which shall be known as the Louis A. Chase Philanthropic Fund. From time to time, you may receive additional irrevocable gifts from Louis A. Chase and from any other source, to be added to the Fund. Distributions from the Fund of principal and/or interest shall be made at such times and in such amount as you determine. Louis A. Chase or Rose Chase may submit to you the names of organizations to which they recommend distributions be made.

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Re: The Jewish Community Foundation
of the Jewish Federation Council of
Greater Los Angeles

Such recommendations shall be solely advisory, and you may accept or reject them, applying reasonable standards and guidelines.

Information submitted shows that you are a "publicly supported" organization under section 170(b)(1)(A)(vi) of the Code, and have been operating as such for at least five consecutive years. You are exempt from the payment of Federal income tax under section 501(c)(3) of the Code.

Accordingly, it is held that upon transfer of the assets of the Louis A. Chase Trust Fund to you in the manner described, there will be no tax to the Trust under section 507 of the Code. The acceptance of the assets by you will not create a separate tax entity.

We are advising the District Director, Los Angeles, California, which is your key district for exempt organization matters, of this action.

Sincerely yours,

J. A. Tedesco

Chief, Rulings Section
Exempt Organizations Branch

MODEL FORMS — BEQUESTS FROM WILLS

A. OUTRIGHT BEQUEST

I give (cash of $_____) or (specified property) to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928), located at 6505 Wilshire Boulevard, Suite 1200, Los Angeles, CA 90048. The Foundation's EIN is 95-6111928.

B. GIFT TO FOUNDATION'S UNRESTRICTED ENDOWMENT FUND

I give (cash of $_____) or (specified property) to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928) to be held and administered as part of The Foundation's Unrestricted Endowment Fund with distributions to be made as part of The Foundation's annual grants process. Distributions shall be made annually based on a spending rate in accordance with The Foundation's policy and guidelines.

C. GIFT TO A FIELD OF INTEREST FUND*

I give (cash of $_____) or (specified property) to the Jewish Community Foundation of Los Angeles (The Foundation) to be held and administered by The Foundation as the _____ Endowment Fund. Distributions shall be made annually based on a spending rate in accordance with The Foundation's policy and guidelines. Distributions shall be for the following charitable purpose(s):

Example: Aid for Jewish Children
Example: Aid for Jewish Elderly

The Board of Trustees of The Foundation may alter the foregoing field of interest designation(s) in the event that it becomes impossible to fulfill, impracticable or undesirable as determined by The Foundation's Board of Trustees.

* This form is for illustration purposes. The Foundation would be pleased to discuss how Field of Interest Funds may be tailored to meet the unique needs of your clients.

D. GIFT TO JEWISH FEDERATION OF GREATER LOS ANGELES RESTRICTED ENDOWMENT FUND

I give (cash of $_____) or (specified property) to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928) to be held and administered by The Foundation as a restricted fund for the benefit of the Jewish Federation of Greater Los Angeles.

The Board of Trustees of The Foundation may alter the foregoing designation in the event that it becomes impossible to fulfill, impracticable or undesirable as determined by The Foundation's Board of Trustees.

E. GIFT TO A FUND DESIGNATED TO A SPECIFIC AGENCY OR INSTITUTION

I give (cash of $___) or (specified property) to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928) to be held and administered by The Foundation as a restricted fund to be known as the _____ Endowment Fund for the benefit of [Name of Nonprofit Agency]. Distributions shall be made annually based on a spending rate in accordance with The Foundation's policy and guidelines.

The Board of Trustees of The Foundation may alter the foregoing designation in the event that it becomes impossible to fulfill, impracticable or undesirable as determined by The Foundation's Board of Trustees.

MODEL FORMS — BEQUESTS FROM LIVING TRUSTS

A. OUTRIGHT BEQUEST

Upon the death of _____ [the Trustor(s)], [cash the sum of $_____] or [describe gift:][_____] shall be distributed to the Jewish Community Foundation of Los Angeles (The Foundation), located at 6505 Wilshire Boulevard, Suite 1200, Los Angeles, CA 90048. The Foundation's EIN is 95-6111928.

B. GIFT TO THE FOUNDATION'S UNRESTRICTED ENDOWMENT FUND

Upon the death of _____ [the Trustor(s)], [cash the sum of $_____] or [describe gift:][_____] shall be distributed to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928) to be held and administered as part of The Foundation's Unrestricted Endowment Fund with distributions to be made as part of The Foundation's annual grants process. Distributions shall be made annually based on a spending rate in accordance with The Foundation's policy and guidelines.

C. GIFT TO A FIELD OF INTEREST FUND*

Upon the death of _____ [the Trustor(s)], [cash the sum of $_____] or [describe gift:][_____] shall be distributed to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928) to be held and administered by The Foundation as the _____ Endowment Fund. Distributions shall be made annually based on a spending rate in accordance with The Foundation's policy and guidelines. Distributions shall be for the following charitable purpose(s):

Example: Aid for Jewish Children
Example: Aid for Jewish Elderly

The Board of Trustees of The Foundation may alter the foregoing field of interest designation(s) in the event that it becomes impossible to fulfill, impracticable or undesirable as determined by The Foundation's Board of Trustees.

* This form is for illustration purposes. The Foundation would be pleased to discuss how Field of Interest Funds may be tailored to meet the unique needs of your clients.

D. GIFT TO A FUND DESIGNATED TO A SPECIFIC AGENCY OR INSTITUTION

Upon the death of _____ [the Trustor(s)], [cash the sum of $_____] or [describe gfit:] [_____] shall be distributed to the Jewish Community Foundation of Los Angeles (The Foundation, EIN: 95-6111928) to be held and administered by The Foundation as a restricted fund to be known as the _____ Endowment Fund for the benefit of [Name of Nonprofit Agency]. Distributions shall be made annually based on a spending rate in accordance with The Foundation's policy and guidelines.

The Board of Trustees of The Foundation may alter the foregoing designation in the event that it becomes impossible to fulfill, impracticable or undesirable as determined by The Foundation's Board of Trustees.

JEWISH COMMUNITY FOUNDATION DONOR ADVISED FUND (DAF) AGREEMENT

To view or download The Foundation's Donor Advised Fund Agreement, please visit **www.jewishfoundationla.org/DAFagreement** or call **323.761.8704**.

A PRIMER ON FAMILY SUPPORT ORGANIZATIONS

Established with the Jewish Community Foundation of Los Angeles

I. What is a Family Support Organization?

A Family Support Organization is a separate not-for-profit corporation (or trust) that exists to support the Jewish Community Foundation of Los Angeles (The Foundation) and those charitable organizations and fields of interest supported by The Foundation. The Family Support Organization is a tax exempt entity for federal and California tax purposes and is classified as a public charity rather than as a private foundation.

Because the Family Support Organization is a public charity, donors' contributions receive the most favored tax treatment under the law. Generally, donors can give a higher percentage of their taxable income than is the case for gifts to private foundations, and gifts of appreciated property (other than publicly traded securities) receive more favorable tax treatment than they would receive if the gifts were made to a private foundation.

The Foundation requires a minimum funding of the Family Support Organization of $2.5 million.

II. Advantages of Family Support Organizations

The creation of a Family Support Organization has several advantages over the creation of a private foundation:

A. The Family Support Organization is classified as a public charity which means that the donor receives the most favorable tax treatment for contributions. Contributions to a private foundation do not provide a donor with the same tax benefits under most circumstances.

B. A private foundation is subject to numerous Internal Revenue Code restrictions and prohibitions; a supporting organization is not subject to as many restrictions and prohibitions.

C. A private foundation is required to pay an excise tax (either 2 percent or 1 percent) on its investment income while a Family Support Organization pays no income tax on its investment income.

D. Most forms of Family Support Organizations are not required to distribute any specified percentage of their assets each year while a private foundation must distribute at least 5 percent of its assets each year.

E. Similar to a private foundation, if desired by the donor, the Family Support Organization's name may include the donor's name, and thus provide an element of name recognition in the community.

F. The administration of the Family Support Organization is handled by The Foundation rather than by the donor, as is the case with a private foundation, which minimizes much of the paperwork, cost and burdens of managing a private foundation.

III. Structure of Family Support Organization

A. Formation

The Family Support Organization is formed by filing articles of incorporation with the California Secretary of State. Although it is possible to organize a Family Support Organization as a trust instead of as a corporation, The Foundation prefers the corporate form because the obligations and duties of the directors of a corporation are more clearly set forth in the law than are the obligations and duties of trustees of a trust.

B. Tax Exempt Status

1. Once the supporting organization is incorporated, it is necessary to file applications with the Internal Revenue Service and the State of California to be declared a tax exempt organization.

2. The Foundation has developed model forms for the incorporation and the obtaining of tax exempt status, and typically, The Foundation's counsel prepares all such forms for the Family Support Organization. If a donor desires to have his or her own counsel prepare the required documents, The Foundation requests that the donor's counsel begin with the model forms developed by The Foundation, and these forms are available without cost to the donor's counsel. Because The Foundation's forms have been approved by the State of California and the Internal Revenue Service, it is suggested that any deviations from the standard forms be discussed with The Foundation's counsel.

C. Board of Directors

1. The Family Support Organization's governing body is its board of directors. Although there are several alternative methods for qualifying a Family Support Organization as a public charity, the most common method is to have a majority of the board of directors appointed by The Foundation. The Foundation has determined that any member of its Board of Trustees or its Advisory Board may act as a director of a Family Support Organization, and The Foundation, in consultation with the donor, will select a majority of the board of directors from The Foundation's Board of Trustees and its Advisory Board. The Foundation's President and CEO or his staff designee will serve as a director of the Family Support Organization. To avoid any appearance that the Family Support Organization is not controlled by The Foundation, certain limitations on the appointment of The Foundation directors may be made by The Foundation to avoid interlocking directorships. The Foundation will discuss the composition of the board of directors with donors prior to beginning the process of forming the Family Support Organization.

2. A minority of the board of directors of the Family Support Organization may be chosen by the donor, and typically consists of the donor and/or members of the donor's family. The Foundation can provide assistance on the selection of family directors. Other categories of individuals who frequently constitute members of the minority of the board of directors are attorneys, accountants, investment advisors and friends.

D. Officers

The officers of the Family Support Organization are chosen by its board of directors and usually consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and sometimes an Assistant Secretary and an Assistant Treasurer. The donor and his or her family may act as officers of the supporting organization. The Foundation's president and CEO will serve as Secretary and its CFO will serve as Treasurer.

IV. Operation and Administration of Family Support Organization

A. Meetings

It is necessary to hold at least one meeting of the board of directors each year, although more frequent meetings may be appropriate for the proper conduct of the organization's affairs. Under the laws of the State of California, in lieu of meetings of the board, actions by the board may be taken by the unanimous written consent of all directors. However, The Foundation requires that one actual meeting take place each year to review the operations of the organization for the previous year and to discuss the plans for the following year. Other interim actions are usually approved by unanimous written consent. Minutes of any meeting and the unanimous written consents in lieu of a meeting must be filed in the minute book maintained by the organization. Such documents are prepared by The Foundation, and a representative of The Foundation's staff attends all meetings of the board of the Family Support Organization. Some of the standard agenda items for meetings or decisions by the board include approval of grants to charitable organizations, a review of investments, the formulation of investment strategy, and the appointment of officers and directors for the following year.

B. Record Keeping, Accounting and Tax Returns

1. The Family Support Organization is required to file one federal and two state income tax/information returns each year. These returns are due on the 15th day of the fifth month after the close of the organization's accounting year (i.e., May 15 for a December 31 year-end). Although it is possible to choose the last day of any month as the end of the organization's year, December 31 is usually chosen because it coincides with the donor's tax year. The Family Support Organization pays for tax preparation and filing fees.

2. The Foundation will maintain all books, records and bank accounts, and prepare all tax returns for the Family Support Organization. Because a majority of the members of the board of the Family Support Organization are volunteers serving at the request of The Foundation, it is important that they, as well as the other directors, be protected by the maintenance of proper records. Although The Foundation recognizes that independent accountants and others may handle these matters competently, as a general rule, The Foundation prefers to provide these services. If some or all of the record keeping and tax return preparation services are not performed by The Foundation, The Foundation requires that periodic reports be made to The Foundation during the year to ensure that the interests of The Foundation and its appointed directors are protected.

3. The Family Support Organization uses The Foundation's office as the office for the organization.

C. Investments

1. The Family Support Organization manages its investments through its board of directors. It is the responsibility of the board to protect and preserve the assets of the Family Support Organization because the Family Support Organization exists to provide benefits to The Foundation and to those charitable organizations supported by the Family Support Organization. The Foundation's overall investment philosophy and procedures are beyond the scope of this memorandum, but representatives of The Foundation are available to discuss them with any donor.

2. It is permissible for board of directors of the Family Support Organization to hire independent investment advisors to assist it in the management of its investments. The Foundation's investment advisors also are available to the Family Support Organization.

D. Gifts and Grants

1. To establish and maintain a Family Support Organization's status as a public charity for income tax purposes, it is necessary for the Family Support Organization to provide support to The Foundation. The Foundation requires the following annual level of support:

    a) One percent, but not less than $7,500 of the first $4,000,000 of the corporation's assets.

    b) Three-quarters of one percent of the corporation's assets in excess of $4,000,000 up to $10,000,000.

    c) One-half of one percent of the corporation's assets in excess of $10,000,000 up to $20,000,000.

    d) One-eighth of one percent of the corporation's assets in excess of $20,000,000 up to $40,000,000.

2. The minimum grant from a Family Support Organization must be at least $1,000. All grants made by the Family Support Organization must be approved by the board of directors of the Family Support Organization.

V. Responsibility of Directors of Family Support Organizations

The directors of a Family Support Organization have the responsibility of carrying out the activities of the organization in a manner consistent with the corporate laws of California, and with the federal and California tax laws. The Foundation and its staff are available to assist the directors in carrying out these responsibilities.

A. Reporting Requirement

As set forth above, the Family Support Organization is required to file annual tax and information returns, hold at least one meeting of directors, and take other actions from time to time which require board approval. The Foundation's staff will calendar the due dates for the various tax and information returns and prepare the returns for the supporting organization. The Foundation also will calendar annual meetings and prepare minutes of any board meetings. The Foundation also will calendar certain other dates such as the date for the election of new officers and directors.

B. Investments

The directors of the Family Support Organization are required to invest the assets of the Family Support Organization in a prudent manner. The Family Support Organization's investments should be reviewed by the board of directors at least annually, and with respect to certain assets that need more attention, as often as necessary to protect the interests of the Family Support Organization and The Foundation. Any director may initiate discussions among other directors for changes in investments or for the maintenance or operation of investments. For example, if the Family Support Organization owns real estate, it is the responsibility of the directors to make certain that the real estate is adequately insured, that there are appropriate safeguards for receipts of rental payments and the expenditure of funds for repairs and maintenance. While these duties may be delegated by the Family Support Organization to property managers and similar professionals, it is ultimately the responsibility of the board to make certain that the persons to whom these duties are delegated are carrying them out in an appropriate manner.

C. Grants

All grants made by the Family Support Organization must be approved by the directors of the Family Support Organization. Distributions by the Family Support Organizations are made to 501(c)3 organizations.

D. Conflicts of Interest

The directors appointed by The Foundation have a dual responsibility because they act as directors of the Family Support Organization and as Trustees of The Foundation or in other fiduciary capacities of behalf of The Foundation. The Foundation and the Family Support Organization are separate entities, but the Family Support Organization exists to provide benefits to The Foundation and organizations supported by the Family Support Organization. Therefore, in almost all situations, the interests of the Family Support Organization and The Foundation coincide, and the directors' obligations will not conflict. If, however, a director believes that he/she has a conflicting interests by reason of his/her dual role in a particular situation, he/she should consult with The Foundation's staff and counsel.

E. Liability

The Foundation requires that the Family Support Organization purchase directors' liability insurance for all directors, including the directors appointed by The Foundation.

RESOURCES

PROFESSIONAL ADVISORS AND THE FOUNDATION

As a professional advisor, you are often the first and most important source of information for people interested in planned giving or in creating a substantial charitable legacy. With The Foundation as your partner in philanthropy, you'll be well equipped to address your clients' complex charitable planning needs, empowering them to support their favorite nonprofit organizations while also securing valuable benefits for their families.

The role we play is up to you.

We'll be involved, visibly or in the background, as you prefer. If your client prefers to remain anonymous, we are glad to work exclusively through you. If not, you're welcome to invite your clients to contact us directly.

We respect the care and integrity with which you have cultivated your relationship with each client.

It's our goal to enhance your ability to serve your clients, to add value to the relationship you already have with them, and to assist you in helping them meet their charitable goals.

We are here to help, whether or not your client has a fund at The Foundation.

In addition to working with our own Foundation family of more than 1,300 donors, we often work with independent philanthropists and private family foundations.

We offer a range of philanthropic services.

- Endowments
- Donor Advised Funds
- Family Support Organizations
- Charitable Remainder Trusts
- Charitable Lead Trusts
- Bequests
- Strategic Grantmaking
- Intergenerational Philanthropy
- Consulting

TOOLS AND RESOURCES PROVIDED BY THE FOUNDATION

For more information about tools and resources for the Professional Advisor, please call The Foundation's Development office at **323.761.8704** or visit **www.jewishfoundationla.org**.

These tools and resources can be accessed from The Foundation's website.

Articles

Numerous articles on topics related to estate planning can be found on our website.

Center for Designed Philanthropy

The Center for Designed Philanthropy helps donors shape meaningful, personalized philanthropic strategies and creative solutions to magnify the impact of their giving.

Estate Planning Workbook

To assist clients with will and estate planning, The Foundation's Estate Planning Workbook helps people gather and organize all pertinent estate planning information in one place before contacting their attorney. Complimentary access to this tool via The Foundation's website.

Gift Calculator

Use our online gift calculator to generate a summary of benefits based on your selected criteria. Complimentary access to this tool via The Foundation's website.

Speaker Series

The Foundation's annual Professional Advisor Speaker Series enables our network of professional advisors to gain knowledge, network with like-minded professionals and become better prepared to address their clients' charitable gift planning needs. The complimentary sessions, including parking and kosher breakfast, are held in Beverly Hills and Woodland Hills locations. MCLE and CPE credits are available. See the schedule of dates, venues and speakers on our website.

Special Events

The Foundation hosts special luncheon events on educational topics of interest. Invitations are sent to The Foundation's network of Professional Advisors.

Videos

View various videos on our website from our featured speakers from past events, addressing relevant topics of interest.

THE FOUNDATION
JEWISH COMMUNITY FOUNDATION
LOS ANGELES

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