Charitable Giving: Sharpening Our Tools

The New York Community Trust

Overview

- Quick Review ~ Charitable Deduction Basics & Key Terms
- Gifts of Capital Gain Property
- Retirement Assets
- Charitable Remainder Trusts
- Community Foundations
- Conclusions & Takeaways

Income Tax Charitable Deductions

General Rules*

Type of Property Contributed *to* the Organization	**Deduction Limit ~ Public Charities** ("50% Limit Organizations")	**Deduction Limit ~ Private Foundations** ("30% Limit Organizations" or "Non-50% Limit Organizations")	**Method for valuing contributed property** (generally)
Cash	60% of AGI	30% of AGI	N/A
Capital Gain Property	30% of AGI^	20% of AGI	FMV
Other Non-Cash Gifts	50% of AGI	30% of AGI	FMV^^

^May choose a 50% limit, *but* then deduction amount is then determined at cost basis value (not FMV).

^^Assumes a "related use" of the contributed property; if put to an "unrelated use," deduction limited to property's cost basis value.

→ *In most cases, contribution amounts that exceed the AGI limits may be carried over into the following 5 years until the full amount has been used.*

* Subject to certain exceptions! Contributions of different types of property to different types of organizations will affect the calculations of the total deduction amount in a given year.

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Capital Gain Property

A category of "Non-Cash" gifts – for purposes of our charitable giving discussion, property is **capital gain property** if the donor would have recognized long-term capital gain had they sold it at FMV on the date of the contribution.[+]

- Examples: stocks, bonds, jewelry, furniture, and (some) works of art
- Keep in mind rules for:
  - Charitable deduction limits
  - Substantiation
    - Acknowledgment from the charity
    - IRS Form 8283 – Noncash Charitable Contributions

[+] IRS Publication 526.

Charitable Giving Opportunities:
Long-Term Capital Gain Property

- Maximize donor's deduction - based on FMV (in most cases)

- "Unlock" low-yield and/or highly-appreciated assets
  → Create a Charitable Remainder Trust (CRT) or Charitable Gift Annuity (CGA)
    - Generate additional income stream for the donor, donor's spouse, or a loved one the donor wishes to support (create a type of "pension")
    - Opportunity to diversify concentrated and/or highly appreciated positions without immediate capital gains liability

Some Abbreviations & Terms

- **CRT = Charitable Remainder Trust**

  A charitable gift plan defined by federal tax law that allows a donor to provide a distribution stream to individual beneficiaries for a fixed term or lifetime, after which the remaining principal passes to charity. May be funded during lifetime or at death and may result in an income tax or estate tax charitable deduction.

- **DB = Designated Beneficiary**

  An individual designated as a beneficiary by the IRA owner; a trust may qualify if it meets certain specific requirements (*very careful planning required*).

- **EDB = Eligible Designated Beneficiary**

  Certain categories of DBs: (1) IRA owner's surviving spouse, (2) IRA owner's minor child, (3) a chronically ill individual, (4) a disabled individual, and (5) an individual not more than ten years younger than the IRA owner.

Some Abbreviations & Terms

- **FGA = Flexible Gift Annuity**

  A contract between a donor and a charity; donor transfers assets (during lifetime or at death) to charity, charity pays 1 or 2 annuitants a fixed sum each year for life, with payments starting ≥ 1 year after the gift transfer on a date selected by the annuitant(s) (from a list included in the annuity agreement).

- **QCD = Qualified Charitable Distribution**

  Direct transfer of up to $105,000 (up to $108,000 in 2025) from an IRA (owner is at least 70 ½) to a charity.

- **RBD = Required Beginning Date**

  The date by which the IRA owner must start taking lifetime distributions from the IRA.

- **RMD = Required Minimum Distribution**

  The minimum amount that must be withdrawn each year from an IRA after the RBD, taxed as *ordinary income*.

I.R.A. Rules Have Changed, and Heirs Need to Pay Attention

A change in the law confers a few new benefits — but the regulations are tricky.

The New York Times

March 5, 2020

Setting Every Community Up for Retirement Enhancement

S.E.C.U.R.E Act (2019) and S.E.C.U.R.E. Act 2.0 (2022)

The two laws represent over 100 provisions aimed at modernizing and bolstering the retirement system.
A sample of the provisions directly impacting IRA owners and their designated beneficiaries:

- Repeal of the maximum age for contributing to a traditional IRA
- Increase in age of RBD
- Cap on QCD amounts indexed for inflation starting in 2024 and one-time QCD to create a CGA or CRT permitted
- **Repeal of the lifetime "stretch" for non-EDBs – application of a new "10-year" rule in most cases**

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SECURE Implications
RMD Age for Account Owners

Effective for individuals attaining…	Date of Birth	RMD age	How SECURE relates…
Age 70 ½ before 1/1/2020	6/30/1949 or earlier	70 ½	Prior to SECURE Act
Age 70 ½ after 12/31/2019 and 72 before 1/1/2023	7/1/1949 to 1950	72	Change with SECURE (2019)
Age 72 after 12/31/2022 and 73 before 1/1/2033	1951 to 1959	73	Change with SECURE 2.0 (2022)
Age 73 after 12/31/2032	1960 or later	75	Change with SECURE 2.0 (2022)

The **RBD** for the first **RMD** is April 1 of the year following the year in which the IRA owner reaches the **RMD age**. For workplace retirement plans, account owners generally may delay taking RMDs until the year they retire (unless they are a ≥5% owner of the business sponsoring the plan).

Example: IRA owner Olivia was born on 2/2/1952. Olivia's RMD age is 73, which she will reach on 2/2/2025. Her RBD is 4/1/2026 (with the amount determined based on her 12/31/2024 IRA balance). Her second RMD is due by 12/31/2026.

SECURE Implications
Inherited IRA Distributions

Lifetime stretch – EDBs only (Eligible Designated Beneficiaries)

- Surviving spouse
- Minor children (of IRA owner only), *until the age of majority – then 10-Year Rule*
- Disabled individual
- Chronically ill individual
- Any individual not more than 10 years younger than the plan owner

→*Not available to later inheritors – <u>one</u> lifetime stretch only*

SECURE Implications
Inherited IRA Distributions

10-Year Rule – DBs (Designated Beneficiaries)*

- Other individuals (non-EDBs)
- Certain Trusts

**To determine RMDs (if any!), must first consider whether IRA owner died* before *or* after *his/her RBD.*

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SECURE Implications
Inherited IRA Distributions

5-Year Rule or (Deceased) Owner’s Life Expectancy – Non-DBs (Nondesignated Beneficiaries)**

- Estate
- Charity
- Non-qualifying Trusts

**To determine RMDs and total payout period, *must first consider whether IRA owner died* before *or* after *his/her RBD.*

Charitable Giving Opportunities:
Retirement Assets

- Take advantage of QCDs during lifetime
  - Outright Gifts
  - Split-Interest Gifts

- Designate charitable organization(s) as a beneficiary

- Designate a Charitable Remainder Unitrust Trust (CRUT) or Flexible Gift Annuity (FGA) as a beneficiary to create a “stretch” stream of income for individual(s) and an ultimate gift for charity

QCDs *(for <u>IRAs</u> only)*

- **Outright donation via Qualified Charitable Distribution (QCD)** (IRA owner at least age ***70 ½***)
  - Up to $105,000/year (indexed for inflation starting in 2024; $108,000 in 2025) tax-free to a qualified charity (does <u>not</u> include DAFs, private foundations, or supporting organizations)
  - Counts towards RMD
  - Not included in taxable income; no charitable deduction
- **QCD to create a Charitable Gift Annuity** (IRA owner at least ***70 ½***) ****New option as of 2023****
  - Up to $53,000 (indexed for inflation; $54,000 in 2025) <u>one-time only</u> in a single year (and counts towards that year's maximum)
  - Generate fixed lifetime payments to plan owner and/or spouse, remaining amount supports charity
  - Funding a Charitable Remainder Trust is also an option, but highly impractical due to lifetime maximum permitted

Advantages:

- ➢ Excluded from income/no impact on AGI – may prevent crossing into a higher tax bracket, avoid phaseouts
- ➢ Not necessary to itemize to benefit, and deduction limits do not apply
- ➢ Efficient use of an otherwise highly taxable asset

Beneficiary Designation

- **Name charities as beneficiaries** of any portion of retirement assets
  - Charities not subject to income tax and can benefit from full designated share (individual beneficiaries must pay income tax on distributions, and in many cases have no more than 10 years to receive full distribution)

Advantages:

- Can maximize total amount passing to all estate beneficiaries
- Qualifies for estate tax charitable deduction, if applicable
- Relatively simple to put in place, *but always be careful especially if client wants to name charities and individuals*

Charitable Remainder Trusts

An irrevocable "split-interest" trust arrangement by which the donor transfers assets to the trust, generates payments to individual beneficiary(ies) for life or up to 20 years, with the remaining assets designated for charity; donor qualifies for an income tax deduction equal to the remainder value. Annual payout must be at least 5% and no more than 50% of the trust's assets; remainder must be at least 10% of the initial value of the funding assets.

- Charitable Remainder Annuity Trust (CRAT)
  - Annual payout to lifetime beneficiaries is **fixed** at the time of the contribution
  - No additions may be made to the trust – a single funding date only

- Charitable Remainder Unitrust (CRUT)
  - Percentage of annual payout is set at the time of trust creation, but amount is recalculated each year based on value of the trust assets at a given date → lifetime beneficiaries share in any changes in trust asset value
  - Additions to the trust *are* permitted
  - Several variations…

Types of Charitable Remainder Unitrusts

- Net Income Charitable Remainder Unitrust (NICRUT)
  - Payout is the *lesser of* the established fixed % *or* the net income → guarantees the trust principal is never invaded to make a distribution
- Net Income *With Make-Up* Charitable Remainder Unitrust (NIMCRUT)
  - Like the NICRUT, if the trust earns more than the fixed % in a later year, the trust *makes up* its earlier shortfall to the extent its earned income exceeds its fixed %
- Flip Charitable Remainder Unitrust
  - Two phases – "pre-flip" and "post-flip"
    - Prior to the "flip," like a NICRUT;
    - After the "flip," like a standard CRUT
  - The occurrence of a specific event triggers the "flip" – sale of certain assets held by the trust, a specific date, an event who occurrence is not within the control of the trustee or anyone else (*e.g.*, a marriage, divorce, death or birth)

CRT Advantages

- Tax-exempt entity
- Immediate income tax deduction eligibility
- Tax-free growth within the trust
- Support for individuals <u>and</u> charities
- Ability to create additional flexibility by naming a community foundation as remainder beneficiary

CRT Opportunities

Think about deploying a CRT to help:

- Diversify assets and trade stocks without capital gain concerns
- Enhance retirement income
- Provide predictable cash flow for later years
- Convert real property or tangible personal property into a stream of income
- Provide expenses for a grandchild’s college education
- Provide cash flow for a loved one (strategy enhancement: consider retirement plan assets*)

*IRA + CRT (or FGA)

- Direct retirement assets to create a **CRUT** or **FGA**
  - Create a source of lifetime payments to an individual, with remaining funds to charity after the individual's lifetime
  - No income tax due on funding of the CRUT or FGA (PLR 199901023); individual beneficiary pays income tax as trust/annuity payments received

Advantages:

- A way to replicate the "lifetime stretch" and also support charity
- CRUT can provide added protection for individual beneficiaries
- FGA can shift a measure of control to individual beneficiary (when to begin payments)
- *However, not for the faint-hearted… complex and requires careful planning, but can offer very significant benefits in the right situation!*

Community Foundations

- Classified as 501(c)(3) **public charities**
- Defined to a geographic area
- More than 800 nationwide
- A union of many charitable gifts
- Grant-making supports nonprofit organizations
- Manages charitable endowments and disburses payouts
- Steward of individual funds

Community Foundation Advantages

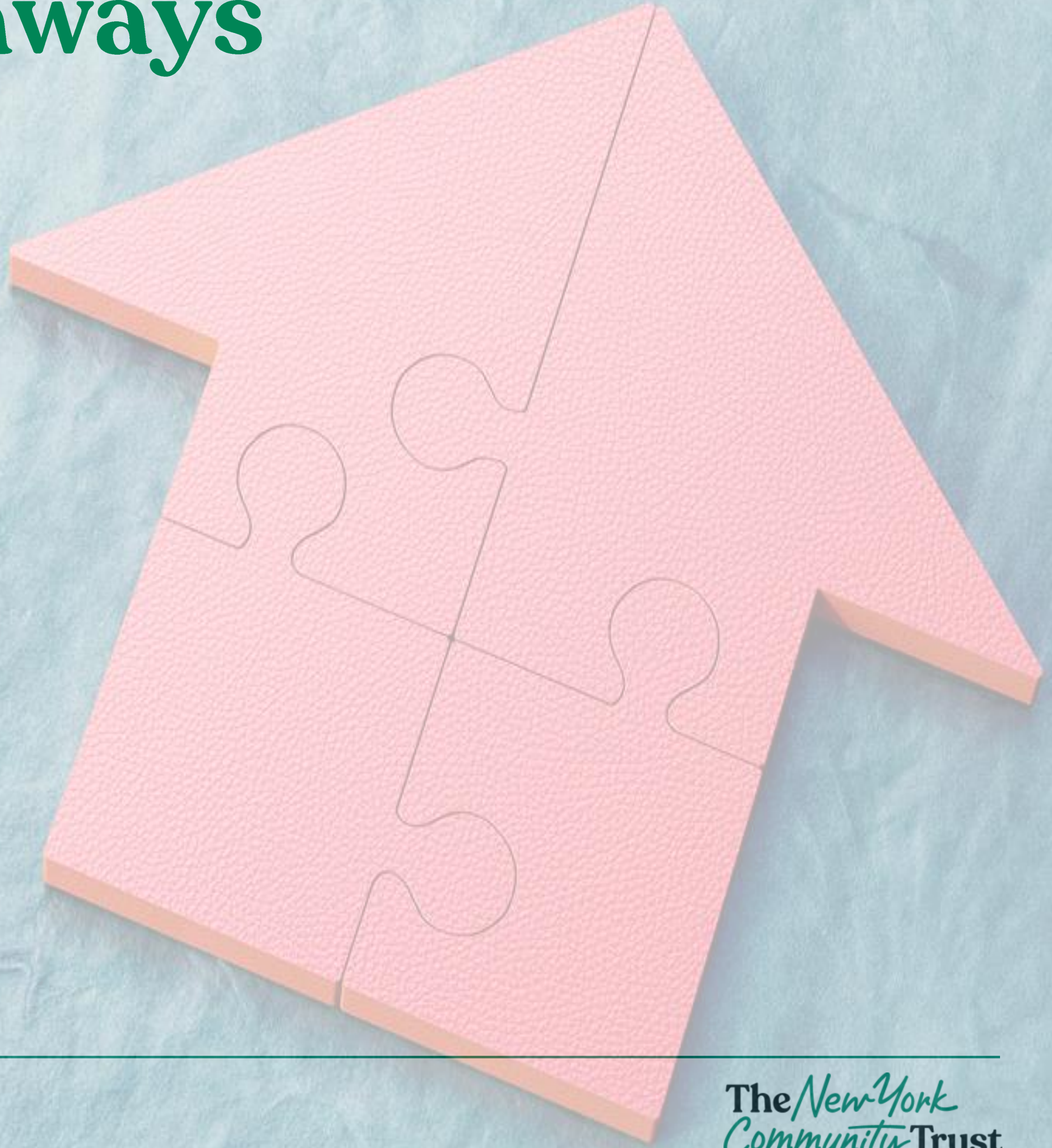
- Maximum tax advantages
- Opportunities for lifetime giving and estate gifts
- Asset acceptance/flexibility
- Access to subject-matter experts and philanthropic advising
- Strong local knowledge
- Collaboration with like-minded donors
- Responsive to emerging issues
- Back-office support, administrative efficiency, and accountability
- Anonymity, if desired

Community Foundation Opportunities

- Offers meaningful legacy options when there are no lineal heirs or close family/friends
- Provides an efficient alternative to a costly private foundation
- Family legacy building
- Passing on a tradition of philanthropy – to family and/or friends
- Supporting strategic planning for business owners
- Leveraging liquidity-events
- Flexibility!
  - → Estate beneficiary (charitably-minded, but indecisive clients)
  - → CRT remainder beneficiary
  - → QCD recipient (Unrestricted and Field of Interest Funds)
  - → “Bunched” charitable gift recipient
  - → Designated beneficiary of a “Santa Clause”

Conclusions & Takeaways

- There are many tax-smart ways to help your clients champion the causes that are important to them.
- Creative planning – during lifetime and through an estate – can help clients make a bigger impact than they might imagine.
- Don’t forget about QCDs and retirement assets as a source for charitable contributions.
- Combining charitable giving techniques – like partnering a CRT with a community foundation as the remainder beneficiary – can accomplish a variety of short-term and long-term planning goals.
- Advisors are **important** in these discussions!



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Thank you.

We welcome your questions and further conversation:

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