Gifts of Privately Held Company Interests to a Charity

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Overview

Donors with ownership interests in privately held companies (i.e., limited liability companies, corporations, partnerships) have the ability to utilize the interest to make a charitable gift. This strategy becomes particularly useful and relevant when Donor is selling his or her business to a third party. Donors with long-term growth of an ownership interest in a business will be subject to federal and state capital gains tax triggered upon the sale of the ownership interest. However, non-cash donations to public charities allow Donor to deduct the fair market value of such donations from their taxable income in the year it is made. As such, donating a percentage of the ownership interest to charity prior to executing a binding agreement to enter into a sale with a third party is a structurally sound choice and a wonderful way to make a charitable gift!

Deductibility to Donor

Capped at up to 30% of adjusted gross income (AGI) to a public charity, though, additional limits may apply if Donor also makes other cash contributions in the same tax year. Donor must itemize on their tax return. Donations in excess of the permitted amount may be carried forward for up to 5 years, subject to the applicable limits and rules in such subsequent years.

Expense to Donor

An appraisal of the fair market value of the interest to substantiate a deduction is required and can range from $10,000-$15,000 for a qualified appraisal. However, if the estimated value of the stock is less than $10,000, an appraisal is not required.

Other Considerations for Donor

- Donor should also seek legal and tax counsel to assist them with the course of the proposed gift.
- If Donor has business partners, she or he will have to seek consent of partners before transferring equity interests in this manner.
- If Donor has a buyer in mind or is in the midst of negotiations, the donation will need to be disclosed and the proposed buyer will also have to feel comfortable with this gift.
- Donor will also incur legal expense with regard to responding to any due diligence requests from both a proposed buyer with respect to the gift, and by the charity and its professional advisors.
- Despite the legwork and additional expense, the Donor will leverage the ability to make a more substantial charitable gift of the full appreciated value of the equity interest, while also realizing savings in tax payments by both avoiding long term capital gains tax on the appreciated interest and receiving the reduction in taxable income of the fair market value of such interest.

Considerations for Charity

- Work closely with legal counsel to review the proposed gift and the underlying rights, restrictions and obligations associated with the company interests.
- Follow all procedures articulated in the charity’s gift acceptance policy pertaining to the acceptance of these gifts.
- The charity, after the completion of the donation, may have tax consequences (i.e. unrelated business tax income (UBTI)). The tax implications for the charity should be evaluated in the due diligence process.
- Performing a risk tolerance assessment when evaluating the acceptance of this gift is key for the charity. It is possible once the appropriate persons (legal and accounting) perform due diligence on the business

of the underlying company, any applicable statutory or regulatory considerations governing the company or its industry and the rights and obligations associated with being an equity owner of the company, additional questions or concerns could arise.
- Suggest this giving technique often and early. Once the ball is rolling with an engaged buyer for Donor’s company/ownership interest, it is too late. If a business or entity is under a binding commitment to sell, the transaction could be construed by the IRS as a “step transaction” with unintended and adverse tax consequences.
- Demonstrating knowledge and awareness of this giving technique will impress potential donors and instill confidence.
- The trend of the market, with a recession forecast on the horizon, continues to be one where business owners may decide to sell out of their businesses. Be at the forefront of their minds!

Partridge Snow & Hahn offers a multifaceted Nonprofit & Tax-Exempt Group and Corporate & Business Group to guide you through the advice necessary to address the complex legal needs unique to your situation. Connect with Elizabeth O. Manchester or Lawrence J. Sheh to learn more on this topic and other crucial areas related to nonprofit, tax-exempt, and charitable planning programs.

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