

The Power Of Giving



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 **GILBERT
& COOK**
PRIVATE WEALTH MANAGEMENT

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Considering a Charitable Gift

Charitable giving provides help to those less fortunate than ourselves.

Reasons for Making a Charitable Gift

Many persons make gifts or bequests to charitable organizations for a number of reasons. Some of the more common motivations would include the following:

- Compassion for those in need.
- Religious and spiritual commitment.
- Perpetuation of one's beliefs, values and ideals.
- Support for the arts, sciences and education.
- A desire to share one's good fortune with others.

Whatever the reasons, U.S. tax law encourages these gifts. [Different](#)

Types of Charitable Gifts

Some donors prefer to make outright gifts of cash or other valuable assets to their favorite charities. Other individuals, although they would like to make an outright gift, depend on the income from their assets for their daily needs. Often, such donors decide to wait until they die to transfer assets to a charity, through a will or trust.

However, there are methods which allow a donor to make a gift now, while still retaining an income for life. The most popular of these methods include:

- **Charitable Remainder Annuity Trust**
- **Charitable Remainder Unitrust**
- **Pooled Income Fund**
- **Charitable Gift Annuity**

Considering a Charitable Gift

Another gifting technique assigns an income interest to the charity for a period of years (or the lifetime of a person), after which the remainder passes to the donor's heirs. Gifts made in this manner involve what are known as charitable "lead" trusts.

- **Charitable Lead Annuity Trust**
- **Charitable Lead Unitrust**

Potential Financial Benefits of Charitable Gifts

- **Income taxes:** May provide an income tax deduction.¹ In many cases, can avoid or delay payment of capital gains tax.
- **Cash flow:** May increase personal after-tax cash flow.
- **Estate planning:** May increase the amount passing to one's heirs.

¹ Federal Income Tax Law. State or local income tax law may differ.

2024 WHAT ISSUES SHOULD I CONSIDER WHEN ESTABLISHING MY CHARITABLE GIVING STRATEGY?

FOUNDATIONAL ISSUES	YES	NO
Have you identified what motivates you to give?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to confirm that your giving is matched to your values?	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to establish a giving plan? If so, consider creating a plan to help you decide rationally, make impactful gifts, and respond when solicited for support.	<input type="checkbox"/>	<input type="checkbox"/>
Do you need to conduct due diligence on a charity? If so, consider the following: Review the charity's mission, leadership, financial health, results, etc. <ul style="list-style-type: none"> ■ Understand how your gift would be used (e.g., overhead, general fund, specific causes). ■ 	<input type="checkbox"/>	<input type="checkbox"/>

FOUNDATIONAL ISSUES	YES	NO
<i>Do you need to quantify how much you can afford to give?</i>		
Is your income fluctuating this year? If so, consider how this impacts your tax incentives and ability to make (or forego making) deductible charitable gifts.	<input type="checkbox"/>	<input type="checkbox"/>
Do you want to make a substantial gift to a charity during your lifetime, but also want an income stream for yourself or another noncharitable beneficiary? If so, consider the following: If the charity you wish to benefit offers a charitable gift annuity (CGA), you can give cash, securities, and possibly other assets in exchange for a fixed stream of income from the charity for your lifetime. (Note the gift tax consequences if the noncharitable annuitant is not yourself.) A charitable remainder annuity trust (CRAT) can make annual payments of a fixed amount of the trust's assets to you or a noncharitable beneficiary for a term of years (not to exceed 20) or lifetime(s), with the remainder <ul style="list-style-type: none"> ■ passing to the charitable beneficiaries. (continue on next column) 	<input type="checkbox"/>	<input type="checkbox"/>

CASH FLOW ISSUES (CONTINUED)	YES	NO
<ul style="list-style-type: none"> ■ A charitable remainder unitrust (CRUT) can make annual payments of a fixed percentage of the trust's assets, revalued each year, to you or a noncharitable beneficiary for a term of years (not to exceed 20) or lifetime(s), with the remainder passing to the charitable beneficiaries. 		
Do you want to make a substantial gift to benefit a charity for a term of years, but ultimately retain the assets for yourself or your heirs? If so, consider the following: A charitable lead annuity trust (CLAT) can make payments of a fixed <ul style="list-style-type: none"> ■ amount for a term of years, lifetime(s), or a combination thereof, with the remainder passing to noncharitable beneficiaries of your choice (e.g., your heirs). A charitable lead unitrust (CLUT) can make payments of a fixed <ul style="list-style-type: none"> ■ percentage of the trust's assets, valued annually, for a term of years, lifetime(s), or a combination thereof, with the remainder passing to noncharitable beneficiaries of your choice (e.g., your heirs). 	<input type="checkbox"/>	<input type="checkbox"/>

CASH FLOW ISSUES (CONTINUED)	YES	NO
<i>Do you have highly appreciated securities held for more than one year?</i> If so, consider the following: Gifts in kind to a charity allow you to avoid recognition of capital gains while making a gift of the full FMV of the securities as of the date of the <ul style="list-style-type: none"> ■ gift. The deduction for gifts of capital gain property is generally limited to 30% or 20% of your AGI, depending on the type of charitable beneficiary (e.g., <ul style="list-style-type: none"> ■ public charity or private foundation, etc.) and the form of the gift. 	<input type="checkbox"/>	<input type="checkbox"/>
Do you have other non-cash assets that you would like to donate? If so, be sure to understand the value and deductibility of such assets, as well as the substantiation requirements. (continue on next page)	<input type="checkbox"/>	<input type="checkbox"/>

ESTABLISHING MY CHARITABLE GIVING STRATEGY?

ASSET ISSUES (CONTINUED)	YES	NO
<p>Do you have a traditional IRA, and are you over age 70.5? If so, consider making a Qualified Charitable Contribution (QCD) of up to \$105,000 (per tax year), which would be excluded from taxable income. If you are subject to taking RMDs, a QCD can count toward satisfying your RMD. Note the "first dollars out" rule.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Do you have time and/or skills that you can contribute? If so, you may not take a deduction for the value of your services; however, you may be able to deduct unreimbursed expenses that you incur as a direct result of services you perform.</p>	<input type="checkbox"/>	<input type="checkbox"/>

TAX ISSUES	YES	NO
<p>Did/will you make charitable gifts this year? If so, consider the following: <ul style="list-style-type: none"> ■ Any cash gift must be substantiated by financial statements or written confirmation from the charity. Cash gifts of \$250 or more must be supported by a contemporaneous written acknowledgment (CWA) from the charity. ■ Generally, noncash gifts of more than \$500 require a CWA and the filing of Form 8283. Noncash gifts of more than \$5,000 must also be supported by a qualified appraisal (unless an exception applies, e.g., for publicly traded securities, vehicles, etc.). For noncash gifts exceeding \$500,000, the qualified appraisal must be filed with your 1040. </p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Did you receive anything of value in exchange for a charitable gift? If so, you may take a deduction to the extent that your gift exceeds the FMV of the goods or services you received in return. A charity must provide to you a written disclosure if you make a quid pro quo gift of \$75 or more.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Do you want to make completed gifts for income tax purposes this year, but delay/spread the distributions to charities over multiple years? If so, consider the following: <ul style="list-style-type: none"> ■ A donor advised fund (DAF) allows you to make a gift and take an immediate charitable deduction while delaying delivery of the funds to the charities of your choosing. (continue on next column) </p>	<input type="checkbox"/>	<input type="checkbox"/>

TAX ISSUES (CONTINUED)	YES	NO
<ul style="list-style-type: none"> ■ You can use a DAF to "bunch" several years of gifts in one tax year, taking advantage of the itemized charitable deduction when your gifts might have otherwise been covered by the standard deduction. You can then spread the grants from your DAF over future years to smooth the impact to the charities. 		
<p>Do you need help determining the deductibility of your gift(s)? If so, consider the following: <ul style="list-style-type: none"> ■ Charitable gifts are itemized deductions (deductible to the extent that they exceed the standard deduction). If your charitable gifts are less than 20% of your AGI, you can generally take a full deduction. Above this threshold, there are several deduction limitation categories, including 60%, 50%, and 30% of your AGI, which may apply depending upon the nature of the charitable gift and beneficiary. ■ Excess deductions can be carried forward for five years. </p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Does your taxable estate exceed your unused federal estate and gift tax exclusion amount (maximum \$13.61 million or \$27.22 million if you are married)? If so, consider incorporating charitable gifts in your estate plan to reduce your federal estate tax liability.</p>	<input type="checkbox"/>	<input type="checkbox"/>

OTHER ISSUES	YES	NO
<p><i>Do you wish to remain anonymous?</i></p>		
<p>Do you need to review your gifting history and impact?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Do you want to impose restrictions on the use of gifted assets? If so, consider earmarking your funds for a specific use, cause, or initiative (provided that you don't jeopardize the gift's deductibility).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Have you signed a pledge agreement under which you are fulfilling annual promises? If so, consider funding (or pre-funding) your pledges when the market is up.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Charitable Giving Techniques

Gifts to charity during lifetime or at death will reduce the size of the gross estate. An additional benefit of lifetime gifts is that an income tax deduction is available within certain percentage limitations.

Split-Interest Gifts

If the estate owner is not willing or able to contribute the entire asset during lifetime, he or she may consider a split-interest, deferred gift.

The ownership interests in an asset can be split or divided into two parts, a stream of income payable for one or more lifetimes or a term of years (the income interest) and the principal remaining after the income term (the remainder interest).¹ In a split-interest gift, one portion is given in trust for the charity and the other portion is retained.

Charitable Remainder Plans

When the estate owner retains the right to the income but transfers his or her rights in the remainder to a trust, it is called a charitable remainder trust.

To qualify for an income tax deduction the trust must be a unitrust, an annuity trust, a pooled income fund, or a charitable gift annuity.

- **Charitable remainder unitrust:** In this type of trust the donor retains a right to a *fixed percentage* of the fair market value of the trust assets, with the trust assets being revalued annually. If the value of the assets increases, so does the annual payout and vice versa.
- **Charitable remainder annuity trust:** This trust is similar to the unitrust but instead pays a *fixed dollar amount* each year.
- **Pooled income fund:** Assets are transferred to a common investment fund maintained by the charity. Each donor receives annually a share of the income from the fund, in proportion to the contribution made. These annual payments continue for the lifetimes of the donor and spouse. At death, the corpus of the donor's gift, together with any capital gains, passes to the charity. Payments will increase or decrease with the investment performance of the fund.

¹ Technically, the present value of the income share and the present value of the remainder interest.

Charitable Giving Techniques

- **Charitable gift annuity:** The donor transfers the asset directly to the charity, in exchange for the charity's agreement to pay a fixed lifetime annuity.

The amount of the income tax deduction is dependent upon the percentage of the income interest and the period over which it will be paid (usually the life of the donor and his or her spouse). This is determined from the mortality tables published by the government.

Charitable Income Trusts

The charitable income or “lead” trust is the reverse of the charitable remainder trust. The income interest is directed to a charity, with the remainder interest generally passing to the donor's heirs. A current income tax deduction is usually allowed for the present value of the income interest paid to charity.

- **Charitable lead Unitrust (CLUT):** The donor transfers assets to the CLUT. Each year thereafter, the trust pays a fixed *percentage* of the trust assets (revalued each year) to selected charities. At the end of the trust term, the remaining assets pass to recipients chosen by the donor.
- **Charitable lead annuity trust (CLAT):** The donor transfers assets to the CLAT. Each year thereafter, the trust pays a fixed *dollar amount* to selected charities. At the end of the trust term, the remaining assets pass to recipients chosen by the donor.

Seek Professional Guidance

Because of the tax and legal complexities involved, the advice and guidance of trained professionals is strongly recommended.

Qualified Charitable Distribution

When the owner of a traditional IRA reaches a certain age, known as the Required Beginning Date, or RBD, federal income tax law¹ requires that individual to begin taking a series



¹ The discussion here concerns federal income tax law; state or local tax law may differ.

of annual distributions from the IRA known as Required

Minimum Distributions, or RMDs.¹

For a typical IRA owner, where the traditional IRA was originally funded with deductible contributions, 100% of the RMD is included in the individual's taxable income in the year the funds are distributed.

If the IRA owner also wants to make a charitable contribution, he or she can make the donation, and then deduct the charitable gift as an itemized deduction on Schedule A of Form 1040. Depending on the individual's personal tax situation, the deduction on Schedule A may, or may not, completely offset the additional income tax from the RMD. [Qualified Charitable Distributions](#)

Federal income tax law contains a provision which allows certain IRA owners to take a distribution from their IRA, transfer those funds to qualifying charities, have the distribution count towards their annual RMD, and have the distribution *excluded* from taxable income. However, *no charitable deduction is allowed* for such a contribution. These distributions are called "Qualified Charitable Distributions," or QCDs.

Requirements for a Qualified Charitable Distribution

There are a number of requirements that must be met in order for a distribution to be qualify as a QCD. Among these are:

- **Type of IRA:** QCDs may only be made from a traditional IRA, a Roth IRA, or a "deemed" IRA under an employer qualified plan. Qualified charitable distributions may not be made from either a SEP IRA or a SIMPLE IRA.

¹ Under current law, the age to begin RMDs increases after 2022 to: (1) age 73 for those born from 1951 to 1958; and (2) to age 75 for those born after 1958. Previously, age 72 was the mandated age to begin distributions. Unlike a traditional IRA, a Roth IRA has no distribution requirement during the lifetime of the account owner.

Qualified Charitable Distribution

- **Age requirement:** The IRA owner must be at least age 70½ at the time the distribution is made.
- **Dollar limitation:** In 2024, a QCD is limited to \$105,000 per person. For a married couple, each spouse may distribute up to \$105,000 per year. In 2023, the QCD limit was \$100,000 per person.
- **Qualifying charities:** QCDs may generally be made to most charitable organizations. However, federal tax law prohibits QCDs from being made to either supporting organizations or donor advised funds.
- **Direct transfer:** In order to qualify, charitable transfers must generally be made *directly* from the IRA trustee to the charitable organization. If an IRA owner receives a distribution from an IRA, and then separately writes a check to the charity, this does not qualify. In this case, the IRA owner will generally have received a taxable distribution and would be entitled to deduct the contribution.
- **Deductible and non-deductible contributions:** If an IRA owner has both deductible and non-deductible contributions in an IRA, only that portion of a distribution that comes from *deductible* contributions qualifies as a QCD.

Example: a taxpayer has an IRA containing \$20,000 of deductible contributions and earnings, and \$5,000 of non-deductible contributions, a total of \$25,000. If the taxpayer gifts the \$25,000 to charity, only \$20,000 will be considered a QCD. The other \$5,000 is not included in income (it's already been taxed), but it may be deducted as an itemized deduction on Schedule A.
- **Inherited IRAs:** QCDs may be made from an inherited IRA as long as the beneficiary has reached the age of 70½ when the distribution is made.

Failure to Meet the Requirements

If a qualified charitable distribution fails to meet all federal requirements, the result is:

1. To the extent the distribution consists of deductible contributions (and earnings), it will be included in the IRA owner's taxable income, and;

Qualified Charitable Distribution

2. Any charitable contribution will be subject to the rules regarding deducting charitable donations, including the percentage of adjusted gross income (AGI) limitations, in effect in the year of contribution.

Any tax reduction will come from the IRA owner deducting the contribution as an itemized deduction on Schedule A.

Benefits to Using a QCD

Although there is no charitable deduction for making a qualified charitable distribution, the fact that a QCD is not included in an IRA owner's taxable income, and thus keeps taxable income lower than it otherwise might be, can bring significant benefits:

- **Taxable social security benefits:** The taxable portion of an individual's Social Security payments (none, 50%, or 85%) is calculated based on his or her adjusted gross income (AGI).
- **Medicare Part B and Part D Premiums:** If a taxpayer's adjusted gross income is high enough, his or her Medicare Part B and/or Part D premiums could increase in future years.
- **Capital gains and qualified dividends:** The marginal income tax rate applicable to most capital gains and all qualified dividends varies, depending on an individual's taxable income. Additional income could cause these types of income to be taxed at higher rates.
- **Schedule A medical expense deduction:** Unreimbursed medical expenses in excess of 7.5% of AGI are deductible as an itemized deduction on Schedule A. A lower AGI could mean a higher medical expense deduction.
- **Larger charitable contributions:** Deductible charitable contributions are normally subject to certain percentage of AGI limitations. QCDs are not subject to these limits, which could result in a larger contribution to a favored charity.
- **Tax credits:** A number of tax credits (a dollar-for-dollar benefit against the tax due) are phased-out when a taxpayer's AGI exceeds specified limits.

Qualified Charitable Distribution

- **State taxes:** A number of states use the AGI figure from a taxpayer's federal income tax return as a part of the state tax calculation. A lower federal AGI may help reduce any state income tax liability.

SECURE Act Impact on Qualified Charitable Distributions (QCDs)

One provision of the SECURE Act, for tax years beginning after December 31, 2019, repealed the prohibition on an individual making a contribution to a traditional IRA after reaching age 70½. This change allows an individual to make a contribution to a traditional IRA at any age, assuming that he or she has “compensation” and meets other requirements. The act also introduced a provision that if an individual makes a *deductible* contribution to a traditional IRA after age 70½, and also takes a QCD, the amount of income excluded because of the QCD may be *reduced*, to reflect the deduction allowed for contributing to the traditional IRA.

SECURE 2.0 Act of 2022 Changes to Qualified Charitable Distributions

The SECURE 2.0 Act of 2022 made several changes to the law concerning QCDs:

- **One-time charitable distribution to a split-interest entity:** For tax years beginning after December 29, 2022, the Act provided for a *one-time* charitable distribution of up to \$50,000 (\$53,000 in 2024) to a charitable gift annuity (CGA), a charitable remainder unitrust (CRUT), or a charitable remainder annuity trust (CRAT). The CGA, CRUT, or CRAT must benefit only the donor or his or her spouse, or both. The Act also required that the annuity or trust be funded *only* with qualified charitable distributions, and that any CGA must begin fixed payments of at least 5.0% no later than one year from when the funds were distributed. This new provision is in addition to the annual qualified charitable distribution discussed earlier.
- **Taxation of income received:** As the law is written, the income derived from a CGA, a CRUT, or a CRAT funded with a qualified charitable distribution will be 100% taxable as ordinary income. This is true regardless of whether the QCD is made from an IRA funded with pre-tax contributions, or from a Roth IRA funded with after-tax contributions.

Qualified Charitable Distribution

Qualified Charitable Distributions from Roth IRAs

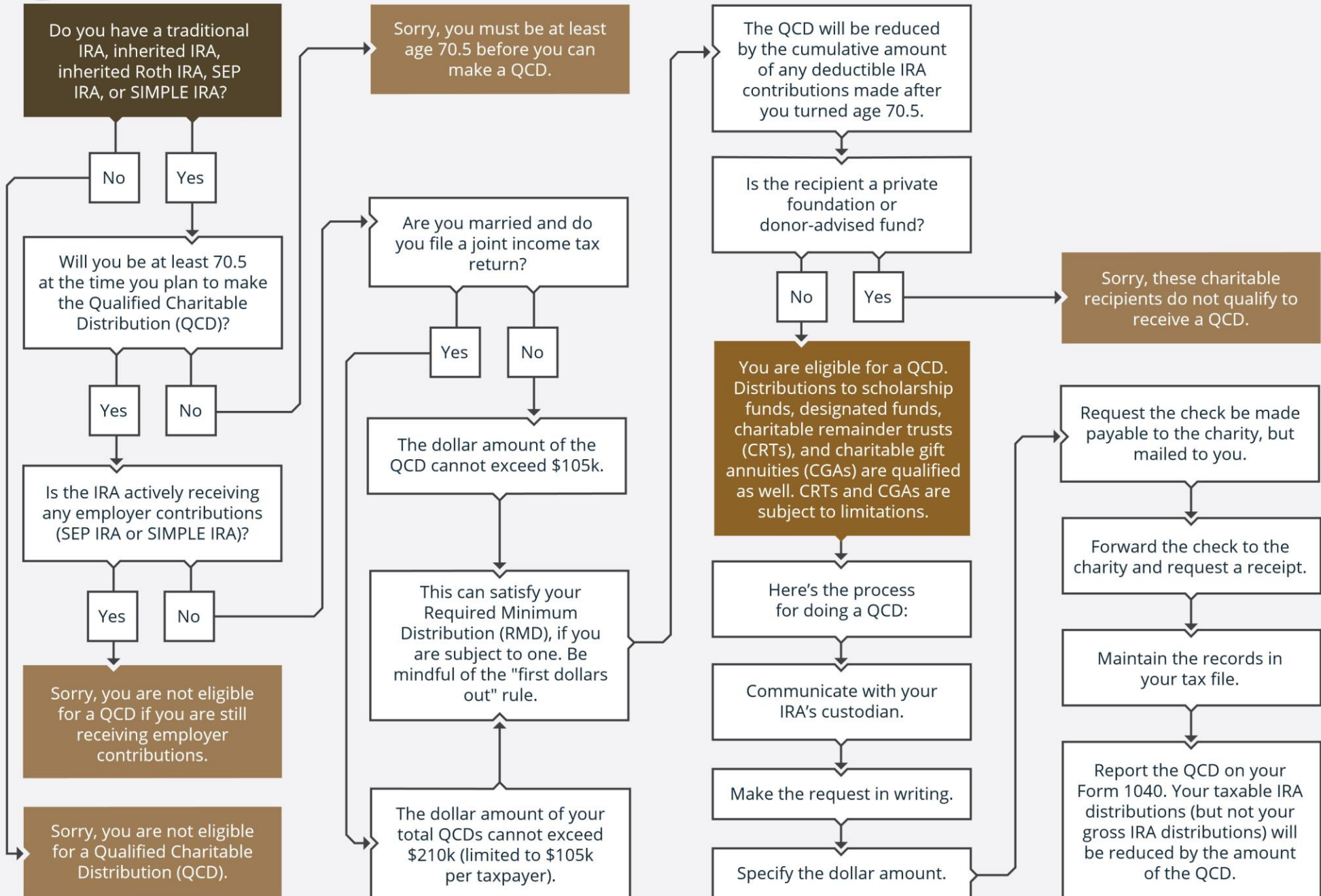
Although federal law allows QCDs to be made from Roth IRAs, there is generally little benefit to making a QCD from a Roth. First, Roth IRAs have no minimum distribution requirement during the account owner's lifetime. Second, a "qualified" distribution from a Roth IRA (one made after five years and meeting certain other requirements) is excluded from taxable income. Thus, by statute, a Roth IRA already provides two key benefits of a QCD.

A Roth IRA owner who wishes to make a charitable contribution is generally better advised to simply ignore the QCD provision. Assuming that distributions from the account are "qualified," a Roth owner can generally take a distribution from the account, not include the distribution in taxable income, make a charitable gift, and then deduct the charitable donation as an itemized deduction on Schedule A.

Seek Professional Guidance

As with many tax questions, a decision to make a qualified charitable distribution is best done after "crunching the numbers" to estimate, in advance, the effect of such a choice on an individual's tax situation. In this effort, the advice and guidance of trained, experienced tax and financial professionals is strongly recommended.

Start Here



Donor-Advised Funds

Americans have many ways to donate to charitable causes. Making a direct contribution to a charity is perhaps the simplest way to help. Deferred giving plans such as a charitable remainder trust or testamentary (at death) gifts through one's will or family trust are other ways to contribute. For high net-worth individuals, who may wish to exercise greater control, a private foundation¹ can be used to achieve both personal and charitable goals.

Donor-Advised Funds (DAFs) are an additional method of giving to charity, with many of the benefits of a private foundation, but at less expense and often with greater tax benefits.

What is a Donor-Advised Fund?

A DAF begins when a “sponsoring organization” establishes a public charity to receive contributions from individual donors. The sponsoring organization has typically been a community foundation. In recent years, investment companies and bank trust companies have also been the sponsoring organization, to better serve their clients.

1. A separate account is maintained for each donor who contributes. At the time of contribution, the donor gives up complete, legal control of the donated assets.
2. In return for his or her contribution, the donor receives an immediate tax deduction for the donated assets.²
3. Although the sponsoring organization has legal control of the donated assets, the donor is typically allowed to *advise* the sponsoring organization (hence the name *Donor-Advised Fund*) as to the dollar amount, timing, and recipient (certain IRS rules apply) of charitable grants made from the donor's account.
4. Under current law, there is no legal requirement that any charitable grant ever be made from a donor's account. Until a charitable grant is made, the assets in each account are invested and grow tax-free.

¹ In this report, the term “private foundation” refers to a private *non-operating* foundation.

² The discussion here concerns federal income tax law. For individual taxpayers, the deduction for charitable gifts discussed here is one of a number of itemized deductions listed on Schedule A, Form 1040. In calculating taxable income, a taxpayer may choose to deduct from adjusted gross income either the standard deduction or the total allowable deductions from Schedule A. State or local income tax may vary.

Donor-Advised Funds

5. Depending on the size of the fund, the sponsoring organization may allow the donor to have the funds managed by his or her own qualified fund manager.

Types of Sponsoring Organizations

There are a number of types of organizations sponsoring DAFs:

- **Community foundations** – Community foundations may appeal to donors interested in giving to both local and national causes. The staff of such foundations are often more knowledgeable about charities and can provide qualified research to help select worthy grant recipients and then provide follow-up criteria to see how a grant is being used.
- **Financial services and investment institutions** – Many of these for-profit institutions offer DAF services to both current and new clients. Here, grant making research and follow-up is typically the responsibility of the donor.
- **Independent organizations** – Such as the American Endowment Foundation or the National Philanthropic Trust. These unaffiliated organizations generally offer expanded services, including acceptance of assets such as closely held stock, interests in an LLC, or unusual types of tangible personal property.
- **Public foundations** – Such as the American Red Cross or American Heart Association; these organizations usually focus on a particular issue or geographical region.
- **Public charities** – A college, university, hospital, or religious group may establish a donor-advised fund within the institution, to advance the organization’s mission.

Advantages of a Donor-Advised Fund

There are many advantages to making charitable donations through a DAF:

1. **Tax benefits** – Cash gifts may be deducted up to 60% of adjusted-gross income (AGI).¹ The current fair-market value of gifts of appreciated property may generally be deducted up to 30% of AGI. If a gift exceeds allowable AGI limits, the excess may be carried over for up to five years. Only the current value of a gift is deductible; any later growth is not deductible.

¹ Under one provision of the Tax Cuts and Jobs Act of 2017, the charitable deduction for contributions of *cash* to public charities was generally increased from 50% of AGI to 60% of AGI for 2018 – 2025.

Donor-Advised Funds

2. **Deduct now, donate later** – A donor can make a donation to a DAF during a year in which his or her income is very high, take an income tax deduction in the year of contribution, but delay making an actual charitable grant until a later time.

Advantages of Donor Advised Funds (continued)

3. **Unusual asset types** – Some DAFs have the in-house expertise to deal with more unusual types of assets such as limited partnerships, real estate, or shares in a closely-held business.
4. **Lower expenses** – The expenses of opening and maintaining a DAF are generally low.
5. **Privacy** – Charitable grants from DAFs may be made anonymously.
6. **Indefinite lifespan** – Many organizations allow a DAF account to continue indefinitely. The initial donor may appoint a successor to continue advising the DAF after his or her death.
7. **Family values** – Involving other family members in the DAF can create a tradition of charitable giving with significant, long-term impact.

Disadvantages of Donor-Advised Funds

There are also several disadvantages to DAFs:

1. **Who can receive a charitable grant?** – DAFs are limited to making donations to charitable organizations.
2. **Loss of control** – Once made, a contribution to a DAF is completely out of the *legal* control of the donor. Although there is an implicit understanding that a DAF will follow the donor's advice, legally, the assets belong to the DAF.
3. **Limited lifespan** – Some DAFs will only allow a donor's account to continue for a specified period of time, for example 20 years. If there are assets left in the account at the end of this period, the individual DAF account is generally closed and the remaining assets are folded into the sponsoring organization's general charitable fund.

Donor-Advised Funds vs. Private Foundations

Donor-advised funds are frequently compared with private foundations as potential vehicles to further one's philanthropic goals. The table below¹ compares key points of each approach.

¹ The table shown is adapted from Congressional Research Service Report R42595, *An Analysis of Charitable Giving and Donor Advised Funds*, July 11, 2012.

Donor-Advised Funds

Item	Donor-Advised Fund	Private Foundation
Start-up costs	Usually none.	Substantial legal and other fees.
Start-up time	Immediate.	Weeks or months.
Excise taxes	None.	1-2% of investment income.

Donor-Advised Funds vs. Private Foundations (continued)

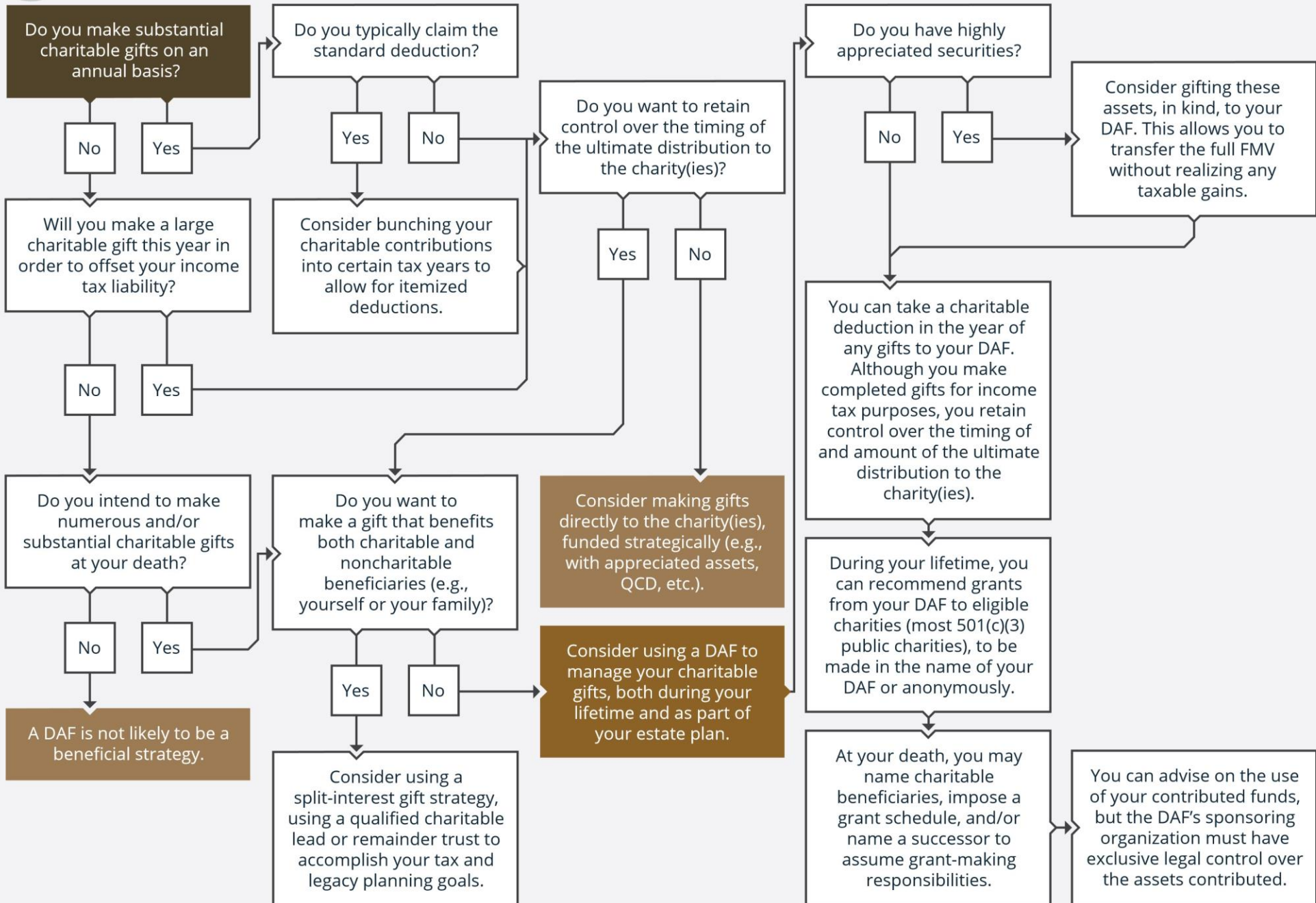
Item	Donor-Advised Fund	Private Foundation
Administrative costs	Generally, less than 1.0% of plus investment 2.5% to 4.0% of assets.	Variable, but generally ranges from assets, management fees.
Privacy	Donor can be anonymous.	None; certain public reports required.
Annual minimum payout requirement	None.	5% per year.
Control	Donor may advise on grants and sometimes on investment management but has no legal control.	Donors and designates may control investments and grants. May receive a salary for their work.
Value used for gifts of appreciated property	Fair-market value.	Fair-market value of <i>publicly-traded</i> securities. Otherwise, cost basis only.
% of AGI deduction limit for cash gifts	60%	30%
% of AGI deduction limit for gifts of appreciated property	30%	20%
Limits on charitable recipients	Gifts may be made only to charitable organizations.	May make charitable gifts to charitable organizations, to individuals, or non-profits (under certain circumstances).

Seek Professional Guidance

The choice of how, when, and to whom to give charitable gifts can be complex. The advice and guidance of appropriate legal, tax, financial, and planned-giving advisors is strongly recommended.

2024 · SHOULD I USE A DONOR ADVISED FUND (DAF) WHEN GIVING TO PUBLIC CHARITIES?

Start Here



Private Foundations

People give money and property to charity for a number of reasons. Among the most common are the following:

- To make a difference in the lives of others.
- The desire to help society by funding one or more worthy causes.
- To enjoy the income, gift, and estate tax benefits derived from charitable giving.

Despite these benefits, one concern a donor may have is the loss of control over money and property gifted to a charity. To meet this concern, a donor can create a private foundation that must distribute annually to charitable causes favored by the donor.¹

What Is a Private Foundation?

A private foundation is a charitable organization created and funded by a donor (during life or at death) which is designed to achieve one or more specific charitable purposes. Overall management of the foundation is provided by a board of directors or trustees often selected by the donor. The directors or trustees can be paid reasonable compensation for their services.

Tax law describes a private foundation as a charitable organization exempt from income tax under IRC Sec. 501(c)(3) other than the following:

- Organizations that generally receive a substantial part of their support from the general public or from the government.
- Religious organizations.
- Educational institutions with regular learning facilities, a student body and a specific curriculum.
- Organizations devoted to promoting public safety.

In addition, a private foundation does not include any charitable organization which:

¹ A private foundation serves not only to distribute funds to charity, but also to transmit the donor's name and personal values to succeeding generations.

Private Foundations

- Receives more than one-third of its support from the sum total of gifts, grants, contributions, membership fees and receipts from a permissible business or activity; and/or,
- Receives one-third or less of its support each year from the sum of gross investment income and excess unrelated business income.

Choice of Entity

A private foundation can be structured as either a corporation or a trust. There are advantages to each type of arrangement:

- A corporation may be more flexible than a trust, to meet changing circumstances. Corporations operate through a board of directors and officers.
- Trustees may be held to a higher degree of responsibility than corporate officers, with respect to liability.
- It may be easier to establish a trust. A trust can be written to allow the donor to be more specific and restrictive; an important point if a donor wants to realize a tax deduction before a tax year closes.
- The filing requirements for a trust may be simpler than for a corporation, which could reduce administrative costs.

Tax Deduction for Contributions to a Private Foundation

Contributions to a private foundation are generally deductible as follows:

- Cash contributions are generally deductible up to 30% of a donor's adjusted gross income (AGI).
- Gifts of appreciated property are generally deductible up to 20% of a donor's AGI.
- Gifts of qualified appreciated stock are fully deductible up to fair market value. The deduction for full market value of qualified appreciated stock by one donor is limited to 10% of the stock of a corporation.
- All appreciated property (other than qualified stock) contributed by a donor during the donor's lifetime is deductible only up to cost basis.

Private Foundations

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- Testamentary (at death) bequests of cash and property are fully deductible from the decedent's estate.

Lifetime gifts of cash or appreciated property, which exceed the applicable 20% or 30% of AGI limitation, can be carried forward for up to five years.

Note: The contribution and deduction limitations described above are unique to private foundations. Gifts to public charities are treated differently under federal tax law.

Special Rules for Private Foundations

Private foundations are subject to a variety of complex tax rules that must be carefully followed to avoid additional taxation and/or penalties. Some of the most important rules include:

- **Failure to distribute income:** If a private foundation fails to distribute its annual income by the end of the year, it is subject to a tax of 30% on the undistributed income. The tax can increase to 100% if the income is not distributed by the date the tax is assessed or by the date the IRS issues a warning (90-day letter).
- **Self dealing:** An excise tax is triggered when a disqualified person¹ engages in any of the following activities:
 - Selling, exchanging or leasing property.
 - Lending money or providing credit.
 - Furnishing goods or services.
 - Paying compensation or reimbursing expenses.
 - Transferring foundation income or assets to or for the use of a disqualified person.
 - Furnishing foundation money or property to a government official.

¹ Under current law, a disqualified person is an individual who is a substantial contributor to a foundation, a foundation manager, certain family members, related business entities, government officials, and others who may hold a fiduciary capacity with regard to the foundation. A disqualified person can be held liable for an excise tax even if a transaction was completed at arms length.

Private Foundations

- A disqualified person who conducts an act of self-dealing is subject to an initial penalty tax of 10% of the amount involved and a 200% additional tax if the self-dealing isn't corrected in a timely manner. Foundation managers who knowingly participate in acts of self-dealing are subject to a tax of 5% of the amount involved. If foundation managers fail to correct an act, an additional penalty of 50% may be imposed.

Excess business holdings: A private foundation that possesses any excess business holdings is subject to a tax of 10%.

- **Bipartisan Budget Act of 2018:** One part of the Bipartisan Budget Act of 2018, signed into law on February 9, 2018, allows a private foundation to own an operating company, provided it owns 100% of the voting stock. All of the profits of the business must go to the private foundation, which will then distribute the funds to charity. In addition, the company must be independently operated – neither the donor nor the donor's family may be an officer or director of the company. The majority of the board of directors of the private foundation must be individuals who are **not** directors or officers of the business, nor members of the donor's family.
- **Net investment income:** A private foundation is liable for an excise tax of 1.39% on its net investment income.
- **Investment jeopardizes charitable purpose:** An excise tax of 10% is imposed if the foundation invests its income and funds in such a way that its charitable purpose is jeopardized.
- **Legislative activities:** An excise tax of 20% is imposed if funds are used for legislative activities or for engaging in propaganda. In addition, foundation managers who authorize such expenditures can be liable for an additional 5% tax.
- As an alternative, a prospective donor may wish to consider contributing to a Donor Advised Fund, a simpler and less expensive option.

Seek Professional Guidance

The rules for establishing and managing a private foundation are extensive and complex. The counsel and guidance of competent, experienced income tax and legal professionals is strongly recommended.

Charitable Income Tax Deduction

Federal income tax law allows a deduction¹ for gifts to qualified charitable organizations, such as churches, colleges, hospitals, charitable foundations, etc. The actual amount of the deduction is dependent upon several factors:

- **Type of charity:** Does the organization benefit the general public or does it have a more limited or private purpose?
- **Type of asset:** Is the donated item cash, a capital asset with untaxed appreciation, tangible personal property, etc.?
- **Portion of asset given:** Is it a gift of the entire asset or only an interest in the asset, like a remainder interest, which will pass to the charity at some time in the future?
- **When gift is given:** Is the gift being made now or will it occur at some future date, as under the terms of a will or trust?

Income Tax Savings

The gift of an asset to a charity generally results in a federal income tax deduction,¹ which may decrease the tax due and increase the amount of net after-tax income for the year. However, charitable contributions are not always 100% deductible against an individual's federal income tax liability.

Limits on Annual Charitable Deduction

Federal tax law limits the amount that is deductible for the year in which the gift is made, generally based on one's adjusted gross income (AGI). If the limit is exceeded for a year, the excess deduction can generally be carried forward for up to five years.

If total charitable contributions for the year do not exceed 20% of AGI, they may all be deducted. However, if total contributions exceed 20% of AGI, the allowable deduction may be limited to 60%, 50%, 30%, or 20% of AGI, depending on the type of property given and the type of charitable organization receiving the gift.

¹ The discussion here concerns *federal* income tax law. For individual taxpayers, the deduction for charitable gifts is one of a number of itemized deductions listed on Schedule A, Form 1040. In calculating taxable income, a taxpayer may choose to deduct from adjusted gross income (AGI) either the standard deduction or the total allowable deductions from Schedule A. State or local income tax law may vary.

Charitable Income Tax Deduction

- **50% limit:** This limit generally applies to charitable gifts to organizations such as churches, hospitals, colleges, or the federal government or state and local governments. For 2018-2025, a 60% of AGI limit applies to *cash* contributions. The 50% limit is available for gifts of capital gain¹ property if the deduction is limited to the *cost basis* of the asset. A 30% limit applies to gifts of capital gain property for which the basis is the current *fair market value*.
- **30% limit:** This limit applies to contributions to charitable organizations such as fraternal societies, veterans' organizations, non-profit cemeteries, and certain nonoperating foundations. This limit also applies to gifts "for the use of" (instead of gifts "to") any qualified charity.
- **20% limit:** This limit applies to gifts of capital gain property to non-50% type charities.
- **Patents and Intellectual Property:** A donor's deduction for gifts of patents and other intellectual property is limited to the lesser of the taxpayer's basis or the fair market value of the property. An additional deduction may be available for a limited number of future years if the donee organization realizes income from the gifted property and certain requirements are met.

Income Tax Deduction for Split-Interest Gifts

Determining the federal income tax deduction for a "split-interest" gift, i.e., a charitable remainder or charitable lead trust, can be complicated. The key factors involved are:

- How long the charity must wait before it benefits; and
- How much income is paid to the beneficiaries each year; and
- The prevailing interest rates at the time of the gift (the IRC 7520 rate).

¹ As used here, capital gain property refers to capital assets held *long-term* (at least 12 months and 1 day).

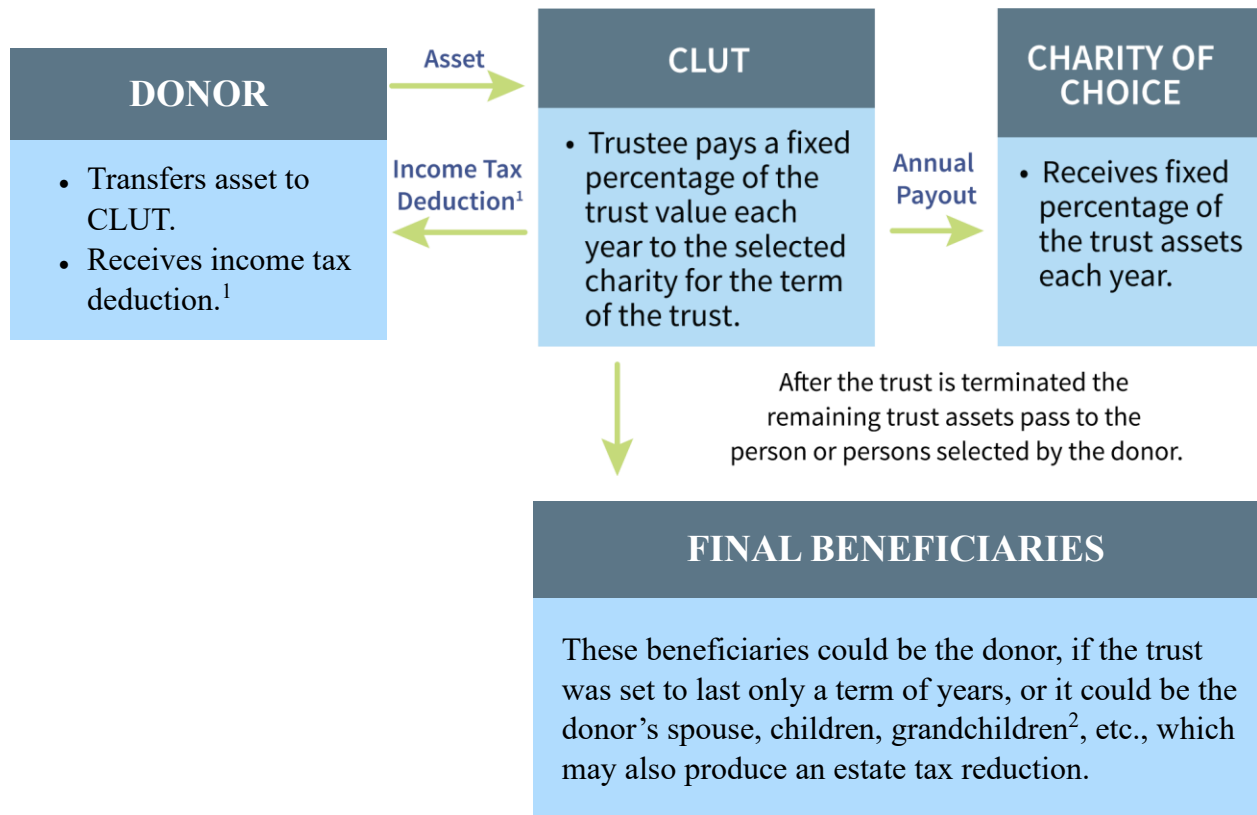
Seek Professional Guidance

The counsel and guidance of a CPA, IRS Enrolled Agent, or other qualified tax professional is strongly recommended.

How a Charitable Lead Unitrust Works

The donor transfers an asset to the trustee of a Charitable Lead Unitrust (CLUT). Each year thereafter, the trust pays a fixed percentage of the trust assets (revalued each year) to selected charities.

At the end of the term of the trust, the remaining assets pass to the donor's heirs, spouse or sometimes back to the donor, if living.



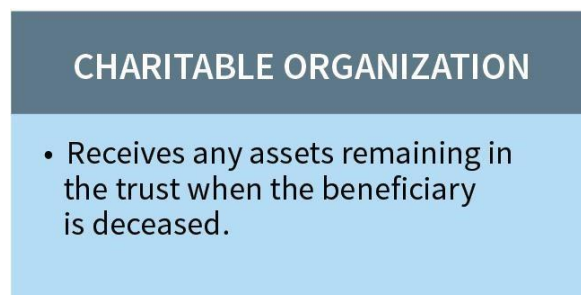
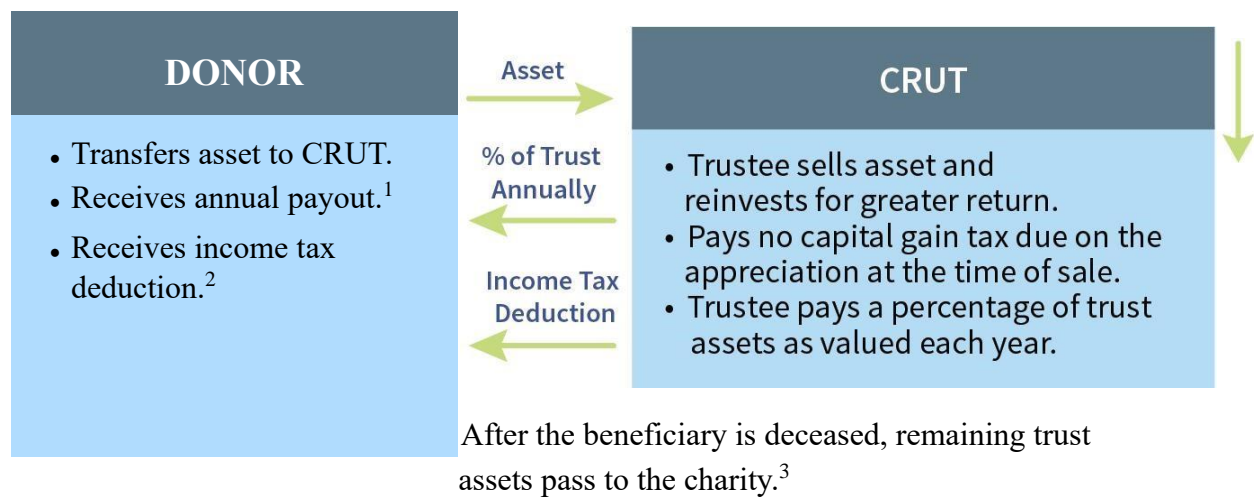
¹ The income tax deduction, allowable only to grantor trusts, may have to be spread over more than one year if it exceeds certain percentage of income limitations.

² Choosing grandchildren (or later descendants) to receive the assets when the trust terminates may trigger the Generation-Skipping Transfer Tax (GSTT).

How a Charitable Remainder Unitrust Works

The donor transfers an asset to the trustee of the charitable remainder unitrust (CRUT) and receives a set percentage of the trust value for each year thereafter. A current income tax deduction is also available.

When the donor or other named beneficiary dies or the trust term ends, the remaining trust assets pass to one or more designated charities.



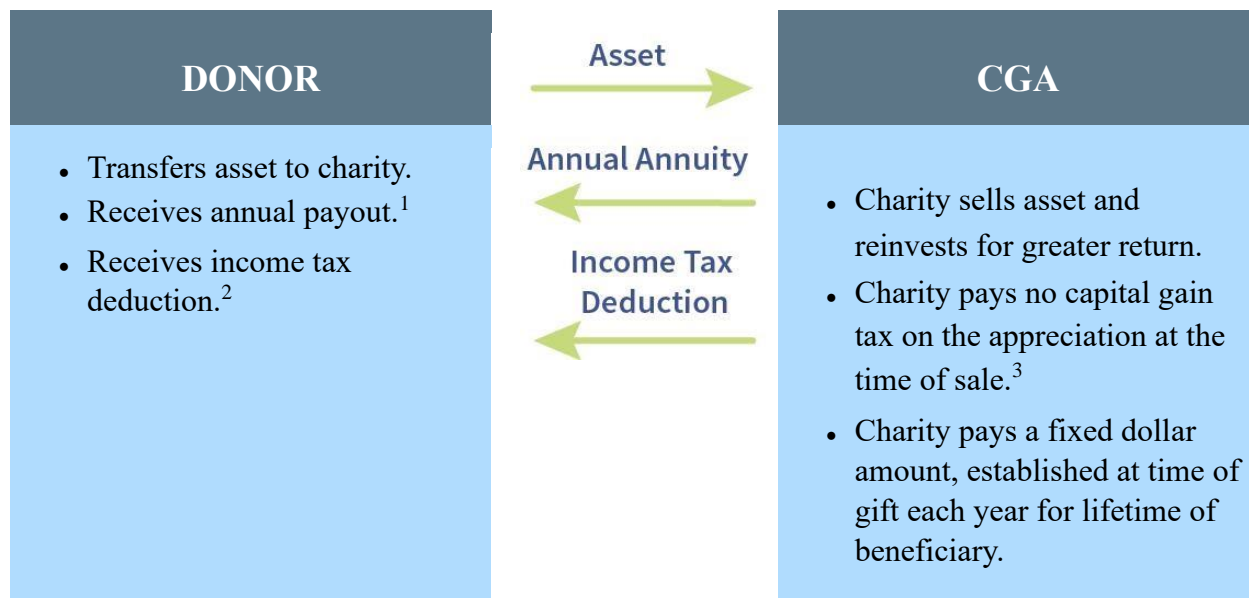
¹ The annual annuity payout is taxed under a four-tier system. Generally speaking, ordinary income is paid first, followed by capital-gain, other income, and trust principal.

² This deduction may have to be spread over more than one year, if it exceeds certain percentage of income limitations.

³ If a surviving spouse “elects” to claim a part of a deceased spouse’s estate, the income and estate tax benefits of a CRUT may be lost.

How a Charitable Gift Annuity Works

The donor transfers an asset to a charity and each year thereafter receives an annuity, i.e. a payment in a fixed dollar amount. The annual payment is set at the time the gift is made. A current income tax deduction is also available.



When the donor or other named beneficiary dies, the charity has no further financial obligations to pay.

Qualified Conservation Easement

Protecting undeveloped land for the preservation of wildlife or the public enjoyment of nature can be one of the most meaningful legacies an individual can make. Few people, however, want to make an outright gift of their ranch or farm property for such purposes.

One possible solution to this dilemma involves creating a Qualified Conservation Easement, and then donating the easement to a charitable conservation organization or government agency. The easement effectively restricts future development and use of the land, while allowing a donor to retain ownership and possession. If the easement meets certain requirements, the donor can be eligible for both income and estate tax benefits.

¹ Annuity payments are part return of principal (nontaxable), part ordinary income and (if any) part capital gain. Once a donor has recovered his or her basis, the annuity payments are fully taxable.

² This deduction may have to be spread over more than one year if it exceeds certain percentage of income limitations.

³ If certain requirements are met, the donor may recognize any capital gain ratably over the time period the annuity is expected to be received. Otherwise, the donor must recognize all capital gain in the year the annuity transaction is entered into.

Federal Income and Estate Tax Benefits

The tax benefits of a qualified conservation easement can be substantial:

- **Income tax benefits:** If a qualified easement is donated during life, the property owner is eligible for an income tax deduction equal to the value of the easement. The deduction is limited to 50% of the donor's "contribution base" (generally, adjusted gross income, or AGI) in the year of the donation. Any excess may be carried forward and deducted for up to 15 years. See IRC Sec. 170(b)(1)(E).¹

For an individual considered to be a "qualified farmer or rancher," the deduction is generally 100% of AGI, with a 15-year carryforward of any unused deduction. See IRC Sec. 170(b)(1)(E).¹

For a corporate "farmer or rancher," the deduction is generally limited to 100% of the corporation's taxable income over the amount of all otherwise allowable charitable contributions, with any excess carried forward and deducted for up to 15 years. See IRC Sec. 170(b)(2)(B).

No income tax deduction is allowed if an easement is donated on the owner's death.

- **Estate tax benefits:** There are two: (1) the property value for estate tax purposes will be lower; and (2) An exclusion from the taxable estate is allowed for up to 40% of the remaining property value (maximum of \$500,000) in the estate. Both are available

¹ The discussion here concerns federal income tax law. For individual taxpayers, the deduction for charitable gifts discussed here is one of a number of itemized deductions listed on Schedule A, Form 1040. In calculating taxable income, a taxpayer may choose to deduct from adjusted gross income either the standard deduction or the total allowable deductions from Schedule A. State or local income tax law may vary.

Qualified Conservation Easement

regardless of when the easement is donated, during life or at death.

Terms and Requirements

The terms of a conservation easement are typically determined by the property owner and the organization that is to receive the easement. There are several requirements that must be met in order for the easement to be considered a “qualified” conservation easement, as shown in the following table:

Issues	Requirements
General	<ul style="list-style-type: none">• A number of general requirements must be met: (1) the property must be located in the U.S. or its possessions; (2) the land must have been owned by the decedent or a member of the decedent’s family at all times during the three-year period ending on the date of the decedent’s death; and (3) a qualified conservation contribution of a qualified real property interest was granted by the decedent or a member of his or her family.• Easement must be permanent and established for at least one of the following: (1) outdoor recreation or education of the general public; (2) protection of a natural ecosystem; (3) preservation of open space for scenic enjoyment or pursuant to a governmental conservation policy that will yield a significant public benefit; or (4) preservation of a historically important land area or certified historic structure¹.
Charitable Organization	<ul style="list-style-type: none">• Donation must be to a qualified charitable or governmental organization with a commitment to protect the easement’s purpose.• Easement must contain legally enforceable restrictions that the charitable organization can (and has the resources to) enforce.

Donor’s Retained Usage

The donor can retain the right to occupy and use the property, to conduct farm operations, to construct residences and related buildings, or farm buildings, all without losing tax benefits. However, the tax benefits may be reduced or lost if the donor retains the right to subdivide or develop the property, to use it for commercial purposes other than farming, or to use the land in a way that threatens the conservation purposes of the easement.

¹ A historically-important land area or certified historic structure is not a qualified conservation purpose for the estate exclusion under federal tax law.

Qualified Conservation Easement

Valuation of a Conservation Easement

A conservation easement is generally valued by appraising the property before and after the donation of the easement. The difference between the two appraisals is the value of the easement. A proportional amount of the donor's income tax basis will be allocated to the easement.

Impact on a Donor's Estate

The donation of a conservation easement can impact a donor's estate in several ways:

- **Reduction in estate size:** The reduction in the value of land means that the size of a donor's estate will be reduced, potentially resulting in a lower estate tax bill.
- **Estate exclusion:** Federal tax law provides that up to 40% of the post-easement value of the property, up to a maximum of \$500,000, may be excluded from the taxable estate. If the easement is worth at least 30% of the original, pre-easement value of the property, the full 40% exclusion is available. If the easement is worth less than 30%, the exclusion will be reduced according to a statutory schedule.
- **No step-up in basis:** Under current law, property received by inheritance generally receives a full step-up in basis to its fair market value on the decedent's date of death. However, property excluded from the estate as a result of the donation of a qualified conservation easement does not receive a step-up in basis. Depending on the situation, there may be circumstances where it would not make sense to use this estate exclusion.

Wealth Replacement Trust

Some of the income tax savings from a conservation easement created and donated during life can be used to fund a wealth replacement trust to benefit the donor's family. A wealth replacement trust is an irrevocable life insurance trust which owns either a life insurance policy on the life of the donor or a survivorship policy on the donor and his or her spouse. If the trust is properly structured, the life insurance proceeds can be fully excluded from federal estate taxes.

Qualified Conservation Easement

Seek Professional Guidance

Estate planning for certain land owners (farmers, ranchers, and rural business owners) presents unique estate planning challenges and opportunities. The regular guidance of appropriate legal, tax, and financial professionals is strongly recommended.