CHARITABLE REMAINDER TRUSTS

Introduction

A *charitable remainder trust* ("CRT") is an irrevocable trust under which the non-charitable beneficiary (or beneficiaries) enjoys a stream of payouts from the trust property for a certain period of time; and, at the end of the time period, the remaining trust property is given to charities.

Structure of the Stream of Payments

If the funding of the CRT is to qualify for the charitable deduction, the amount to be paid to the non-charitable beneficiary either must be a fixed annuity or a variable annuity (called a "unitrust"). The fixed annuity type is a specific percentage of the initial contribution. The unitrust variety is a fixed percentage of the value of the trust property that is revalued each year.

There are several variations on the unitrust payout. First, the payout may simply be the unitrust amount. Second, the payout may be for the *lesser* of the trust's income for the year and the unitrust amount.

A third option is to provide for a payout that is the *lesser* of the trust's income for the year and the unitrust amount, but with a "make-up" provision. With a make-up provision, the beneficiary would have the right to have any shortfall in the unitrust payments in low income years made up in later years when the trust income exceeds the stated unitrust percentage.

Fourth, the payout might change from an income payout to a unitrust amount at some specified time or upon some specified event. This payout option might be used where the property is currently not productive of income (e.g. undeveloped land) or the grantor wishes to defer distributions.

Gift and Estate Tax Consequences

A calculation is made at the time the trust is funded to determine the value of the stream of payments to the non-charitable beneficiaries. That value is either a taxable gift or part of the grantor's taxable estate, depending on whether the grantor is living when the trust is established. The balance of the trust funding—the value of the remainder interest to charity—is deductible for gift or estate tax purposes. If the trust is established during the grantor's lifetime, an income tax deduction is also obtained. This income tax deduction (coupled with the fact that the CRT pays no capital gains tax on the sale of appreciated assets in the trust) makes the CRT an appealing vehicle for someone who wishes to sell high value, low basis property without incurring significant capital gains liability.

Other Planning Possibilities

At times a CRT is coupled with what is known as a *wealth replacement trust*. The tax saving obtained from the CRT is used to purchase a life insurance policy on the grantor's life or a survivorship policy on the lives of the grantor and the grantor's spouse. Insurance proceeds payable to family members replace the remainder interest that goes to charity. Our planning attorneys are available to discuss these and other options with you.