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A common-sense approach to the practice of law.

HAVE YOUR CAKE AND EAT IT TOO WITH A CHARITABLE REMAINDER TRUST

Here is a tasty estate planning recipe to consider:

INGREDIENTS:

1 Cup Appreciated assets (rental or vacation property, or appreciated stock are good choices).

1 Charitable Remainder Trust. Can be for a single person or married couple. Can be a Uni-Trust or an Annuity Trust.

RECIPE:

Form charitable Remainder Trust, add appreciated asset and stir well to create immediate tax deduction. The (charitable) tax deduction can be taken this year or used over the next 5 years. The amount of the deduction will be based on several factors including the type of asset placed in the trust, the age of the individual(s) forming the Trust and the percentage amount to be paid annually.

Sell the appreciated asset in the Trust and pay no immediate capital gains tax.

Set aside for about a year. Then commence receipt of income stream for the life of individual or couple forming the trust (or a maximum of 20 years if the beneficiary is someone else such as a son or daughter, niece or nephew).

The minimum annual percentage to be drawn from the trust is 5% of the value of the trust and there is a cap on how high the percentage rate can be.

Buy and sell stocks and bonds inside the Charitable Remainder Trust without tax consequence. In this respect, a Charitable Remainder Trust is much like an IRA. Certain assets, such as most limited partnerships, are best not purchased by a Charitable Remainder Trust.

Draw income stream for life of single individual or until the death of the surviving spouse if a married couple.

At the end of life, any amounts remaining in the Trust will pass to the charity or charities you have named without probate fees or costs.

WHY THIS TASTE SO GOOD

1. There is no immediate capital gains tax to be paid on the sale of the asset. Thus, you are able to enjoy the return on 100% of the net sales price of the asset without immediately losing a significant portion of the sales price to capital gains tax.

2. There is an immediate tax deduction. The deduction can be used to reduce income tax exposure this year or over the next five years.

3. You (and your spouse) will receive a lifetime stream of income from the trust. The minimum stream will be 5% of the value of the trust as valued each year (Charitable Uni-Trust or CRUT) or 5% of the original value of the Trust (Charitable Annuity Trust or CRAT).

4. You (and your spouse) can manage and invest the assets in the Charitable Remainder Trust.

5. Upon your death (single) or the death of the surviving spouse (married) the amount remaining in the Trust will pass to the charity(ies) you have selected without probate.

6. You can change your mind about the charitable beneficiaries you want to name so long as the new beneficiaries are qualified charities.

7. If you hold a concentrated position of a particular stock, the Charitable Remainder Trust offers a strategy for diversification without taking an up-front tax hit.

EVEN GOOD CAKE HAS DOWNSIDES

1. The tax deduction will most likely be less than you would hope. Remember, it is based on an amount going to charity in many years, not today. Therefore, the deduction is discounted. Several factors, including your own tax situation, will dictate how much of the deduction you can use this year and in the next few years. This is for discussion with your tax professional.

2. The stream of income you will receive over your lifetime(s) is subject to income and/or capital gains tax. Think of a layered cake. The IRS says you have to eat the income tax layer first, then the capital gains tax layer, then the non-taxable income layer and, finally, the principal layer. So, taxes are not avoided However, they are DEFERRED.

3. The Charitable Remainder Trust is its own entity and it needs to file its own tax return each year. Those returns are not easy so you can count on the need for a tax professional's help.

4. You have to let go of the asset and nest-egg amount produced as a result of the sale of the asset because that is going into the Charitable Remainder Trust 'forever'. You cannot retrieve it. However, that amount will be returned to you through the income tax deduction, the fact that you are able to invest 100% of the net proceeds from the sale of the asset and the income stream you will receive during your life.

NOW ENJOY YOUR CAKE!

If you would like further information on Charitable Remainder Trusts, please feel free to contact your estate planning attorney or you can contact us: McDowall Cotter, APC. We are located at 2070 Pioneer Court, San Mateo, CA 94403, our phone number is 650-572-7933 or you can email us at mcdclientsvcs@mcdlawyers.net. We can run a hypothetical case for you showing the estimated tax deduction and the breakeven point on the stream of payments.

Please understand that this article is meant to give you only a taste of Charitable Remainder Trust planning and is not legal advice. Please do not rely on this article for establishing your own charitable remainder Trust and please consult with the professional(s) of your choice in determining whether a Charitable Remainder Trust is an appropriate addition to your existing estate plan.