

Jewish Community Federation  
DAY OF PHILANTHROPY  
October 30, 2014

**ASK THE EXPERTS PANEL**

Moderator: Philip B. Feldman, Coblenz Patch Duffy & Bass, LLP  
Panelists: Justin T. Miller, BNY Mellon  
Charles H. Packer, Hopkins & Carley, A Law Corporation  
Jeffrey A. Bernstein, Coblenz Patch Duffy & Bass, LLP

**Agenda**

- Welcoming Remarks
- Current State of Estate and Gift Taxes
- IRA Charitable Rollover
- Some Interesting Current Cases
- Donor Advised Fund v. Private Foundation
- Brief Primer on Charitable Remainder Trusts
- Some Nontax Charitable Planning Issues

## Current Gift and Estate Tax Info

### Key exemption amounts

- 2012 Legislation created “permanent” unification of Gift, Estate and GST tax exemptions
- \$5M exemption per person (indexed)
- \$5.34M/\$10.7M for 2014
- Estimate for: 2024 - \$6.8M/\$13M+  
2034 - \$9M/\$18M+
- 40% tax rate
- Portability made “permanent”
- Annual Exclusion at \$14,000 for 2014

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## Magnitude of Increase in Exemptions

| Client Estate | Estate Tax                          |                   |
|---------------|-------------------------------------|-------------------|
|               | 2014 if no change<br>(same as 2000) | 2014 after change |
| \$5M          | \$1.25M                             | 0                 |
| \$10M         | \$3.5M                              | 0                 |
| \$20M         | \$8.5M                              | \$3.8M            |
| \$50M         | \$25.0M                             | \$16.0M           |

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## Fun Facts After Tax Reform

- In 2001, 120,000 estate tax returns filed; In 2012 under 4,000 filed
- 99.8% of Americans exempt from estate tax
- Less than 1% of total Federal revenue
- \$200 billion\* = combined budgets for FDA, Centers for Disease Control and Prevention, and the EPA
- Is there legislative will to change this highly progressive system?

\* Based on 10 year projections

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## Estate and Gift Tax Planning Must Focus on Income Tax Planning

- Income Tax Rates
  - 39.6% rate; CG/Div 20% rate
  - 3.8% Medicare Surtax on Net Investment Income
  - California Proposition 30 - rates up to 13.3%
- The “step-up in basis” may permit wealthy families to eliminate CG on *inherited* assets but not *gifted* assets.
- **Example:** Parents own: home (AB \$1M; FMV \$3M); stock portfolio (AB \$1M; FMV \$2M); rental real estate (AB \$0; FMV \$5M)  
Estate Tax \$0; AB \$10M; family avoids \$8M CG exposure/\$2.5M CG tax.

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## Cases

### Mohamed v. Commissioner TC Memo 2012 – 182

- Joseph Mohamed was a real estate broker that amassed a fortune in real estate.
- In 1998, he set up a charitable remainder unitrust (CRUT) and named several charities as remainder beneficiaries.
- In 2003 and 2004 he transferred multiple real properties in excess of \$20 million to the CRUT, and claimed charitable contribution deductions.
- Taxpayer valued the donated properties himself based on his broker expertise.
- The IRS disallowed the charitable deduction because Mohamed did not comply with the Treasury Regulations requiring a “qualified appraisal” from an independent qualified appraiser. Result: no deduction was allowed.

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## Cases

### J. ELKINS JR. EST., 2014 – 2 USTC ¶160,683 (5TH CIR.)

- Decedent and his wife were art collectors.
- Upon his wife's death, fractional interests in 64 art pieces were transferred to his children and entered into various agreements with his children that restricted the transfer, possession and partition of the art.
- The art was appraised and its value was discounted by 45% based on the fractional interest subject to the restrictive agreements.
- The IRS asserted that no discount was allowed.
- The Tax Court allowed a 10% discount.
- On appeal to the Fifth Circuit, the Court allowed the entire discount claimed.
- Result: \$14 million refund! 5th Circuit accepted the Decedent's valuations because IRS failed to provide any evidence regarding the discount.

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# Private Foundation vs. Donor Advised Fund

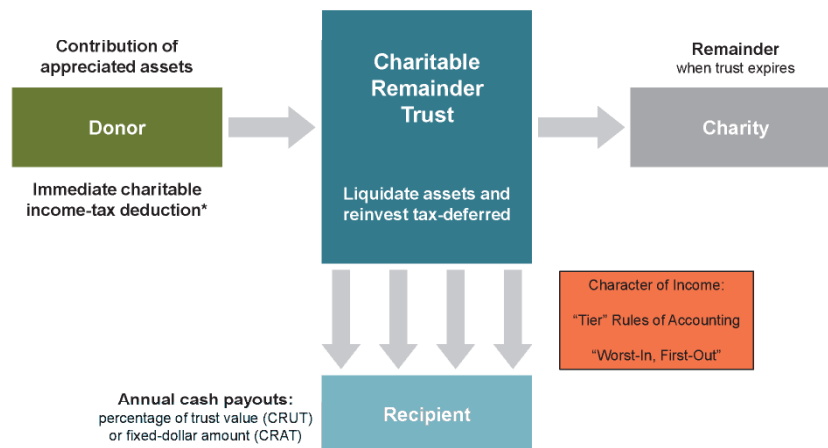
## COMPARING TWO PHILANTHROPIC VEHICLES

|                                     | Private Foundation  | Donor Advised Fund   |
|-------------------------------------|---|--|
| <b>Tax Deductibility</b>            | <ul style="list-style-type: none"> <li>Cash—up to 30% of AGI</li> <li>Appreciated and closely held stock—up to 20% of AGI</li> </ul>  | <ul style="list-style-type: none"> <li>Cash—up to 50% of AGI</li> <li>Appreciated and closely held stock—up to 30% of AGI</li> </ul> |
| <b>Minimum Payout Requirements</b>  | <ul style="list-style-type: none"> <li>5% annually</li> </ul>   | <ul style="list-style-type: none"> <li>None</li> </ul>   |
| <b>Investment Flexibility</b>       | <ul style="list-style-type: none"> <li>Divest excess business holdings within five years or pay excise tax</li> </ul>                 | <ul style="list-style-type: none"> <li>Donor chooses among investment options offered by DAF</li> </ul>                              |
| <b>Grant Making Support</b>         | <ul style="list-style-type: none"> <li>Create and handle due diligence and monitoring structure</li> </ul>                            | <ul style="list-style-type: none"> <li>Professional staff of DAF handles due diligence</li> </ul>                                    |
| <b>Administration</b>               | <ul style="list-style-type: none"> <li>Legal/accounting fees; filing fees; and annual tax return</li> </ul>                           | <ul style="list-style-type: none"> <li>DAF handles all administration</li> </ul>   |
| <b>Excise Taxes</b>                 | <ul style="list-style-type: none"> <li>1% to 2% of investment income annually</li> </ul>  | <ul style="list-style-type: none"> <li>None</li> </ul>   |
| <b>Liability and Risk Insurance</b> | <ul style="list-style-type: none"> <li>Must be purchased</li> </ul>   | <ul style="list-style-type: none"> <li>Provided by DAF</li> </ul>  |
| <b>Start-Up Costs</b>               | <ul style="list-style-type: none"> <li>Legal fees and other start-up costs can be substantial</li> </ul>                              | <ul style="list-style-type: none"> <li>Typically none</li> </ul>   |
| <b>Valuation of Gifts</b>           | <ul style="list-style-type: none"> <li>FMV for cash/publicly traded stock; cost basis for closely held stock/real property</li> </ul> | <ul style="list-style-type: none"> <li>Fair market value</li> </ul>  |
| <b>Privacy</b>                      | <ul style="list-style-type: none"> <li>No</li> </ul>  | <ul style="list-style-type: none"> <li>Yes</li> </ul>  |



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## How a Charitable Remainder Trust Defers and Avoids Taxes



\*The income-tax deduction is not the total amount contributed, but rather the present value of what is expected to pass to charity. The calculation of the present value takes into account the value of the contributed assets, the discount rate (based on the Section 7520 rate) and the term of the trust (for lifetime trusts, a life expectancy table is used). See Sections 7520 and 664 of the Internal Revenue Code of 1986, as amended, and the Treasury regulations thereunder.  
Source: AllianceBernstein.

## Today: CRUTs Up, CRATs Down

### Maximum Allowable Lifetime Unitrust Percentage

| Age | 2.4% 7520 Rate | 6.0% 7520 Rate |
|-----|----------------|----------------|
| 40  | 7.086%         | 7.611%         |
| 50  | 9.879%         | 10.824%        |
| 60  | 15.260%        | 16.969%        |
| 70  | 25.872%        | 28.671%        |
| 80  | 49.029%        | 50.000%        |

### Maximum Allowable Lifetime Annuity Percentage

| Age | 2.4% 7520 Rate | 6.0% 7520 Rate |
|-----|----------------|----------------|
| 40  | ---            | 6.238%         |
| 50  | ---            | 6.441%         |
| 60  | ---            | 6.839%         |
| 70  | 5.075%         | 7.569%         |
| 80  | 6.907%         | 9.235%         |

Source: AllianceBernstein



AllianceBernstein.com

Charitable Remainder Trusts—They're Back!