

## THE DIVERSITY OF GIVING: FUNDING ALTERNATIVES

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You have attained a level of financial security that allows you the freedom to devote resources to causes that are important to you and to make a difference in the lives of others. But with opportunity comes challenge. Having made the decision – and commitment – to contribute to charity, you are now faced with determining how best to ensure your desired legacy is achieved.

At Northern Trust, we recognize that philanthropic giving is personalized and unique to every individual. Working with you and your other advisors, we can help you determine the course of action that will best accomplish your objectives and work with you to implement your charitable strategy, ensuring that you and your family have as much – or as little – involvement in the day-to-day activities as you desire.

### GIVING IN ACCORD WITH YOUR GOALS

*A unique family situation.*

*An upcoming liquidity event.*

*A commitment to the community.*

There are many reasons for making philanthropy an integral part of your personal wealth transfer plan. Once you've made the decision to contribute to charity and identified the solution that best meets your needs, there still remains the question of what to donate. This choice depends not only on your net worth, but also on the nature of the assets you may have worked a lifetime to accumulate. The decisions you make here will directly impact the effectiveness of your philanthropy.

### CHOOSING WISELY

No matter what your particular situation, choosing wisely among a broad range of funding alternatives is an important part of making a significant charitable donation. Whether you have a concentration of highly appreciated stock, a family business or an art collection, it is important to understand the implications of each potential funding source. To the extent that your assets are complex or unusual, you will want to involve the recipient charities – good communication helps ensure that your expectations will be fulfilled and that your funding choices will not create unanticipated problems. This is a time to make use of your team of experienced financial advisors.

- Your *estate planning attorney* will have suggestions about the types of assets best suited for a particular charitable vehicle.
- Your *investment managers*, with their knowledge of your portfolio, will be able to identify highly appreciated assets, concentrations and assets with unusual characteristics.
- Your *wealth advisor, financial planner and trust administrator* can help assess cash flow needs – both for you and your family members.
- And your *accountants* will be familiar with your personal tax profile: adjusted gross income, income tax bracket, accumulated capital gains or losses and alternative minimum tax liability.

## PROTECTING YOUR CHARITABLE DEDUCTION

Although tax savings are rarely the primary motivation for significant philanthropy, donors generally expect their charitable transfers to result in charitable deductions. Protecting that charitable deduction typically requires specialized expertise. For example, many donors are surprised to learn that the size of their income tax charitable deduction depends not only on the size of their gifts but on the type of assets used to fund them and the type of charity involved.

### *Transfers During Your Lifetime and at Death*

Significantly, some distinctions that are very important for lifetime transfers become unimportant at death. The estate tax, in contrast to the income tax, allows an unlimited charitable deduction for all properly structured transfers, whether in cash or in kind. The basis and holding period rules that apply at death are another great leveler, giving all assets a step-up in basis to fair market value and a long-term holding period. A skilled planner will know how to make all these technical rules work for you.

## IDENTIFYING FUNDING ALTERNATIVES

For some donors, the potential funding sources are limited to cash, publicly traded stock or a combination of both. For others, the funding alternatives are more diverse and also may include:

- Closely held stock, including S corporation stock
- Real estate
- Collections of tangible personal property (art, books, coins, etc.)
- Patents, trademarks and other intellectual property
- Retirement assets
- Employee stock options
- Alternative investments

## CASH AND LONG-TERM APPRECIATED PUBLICLY TRADED STOCK

The two most common philanthropic funding sources are also the most familiar: cash and publicly traded stock. Choosing between these two alternatives requires some basic knowledge of your portfolio:

*Which stocks have declined in value?*

*Which have appreciated?*

*Which are long-term holdings?*

From a tax standpoint, it generally makes sense to:



In contrast, donating a long-term *appreciated* publicly traded stock generally means avoiding or deferring capital gains tax on sale – while at the same time garnering an income tax charitable deduction based on fair market value.

**TABLE 1: INCOME TAX CHARITABLE DEDUCTION**

TRANSFER TO	AGI LIMITATION	DEDUCTION BASED ON
Public charity	50% for cash 30% for long-term capital gain property	Fair market value
Private foundation	30% for cash 20% for long-term capital gain property	Fair market value for cash and publicly traded long-term appreciated stock; tax cost for other long-term capital gain property, including closely held stock and real estate
Charitable remainder trust with public charity as remainderman	50% for cash 30% for long-term capital gain property	Fair market value
Charitable remainder trust with private foundation as remainderman	30% for cash 20% for long-term capital gain property	Fair market value for cash and publicly traded long-term appreciated stock; tax cost for other long-term capital gain property, including closely held stock and real estate
Non-grantor charitable lead trust	n/a	n/a
Supporting organization	50% for cash 30% for long-term capital gain property	Fair market value

**Funding Truth #1:**  
Running actual income tax projections is the best way to see how different choices affect the size of your potential charitable deduction.

### The Income Tax Charitable Deduction

For income tax purposes, donations of long-term publicly traded stock are treated very differently from donations of cash. As you can see from Table 1, if the recipient is a public charity, cash is deductible up to 50% of adjusted gross income. By contrast, the fair market value of a gift of long-term appreciated publicly traded stock is deductible up to only 30% of adjusted gross income if transferred to a public charity – and up to 20% of adjusted gross income if transferred to a private foundation. Note, however, that donors may deduct up to 50% of adjusted gross income for gifts of long-term appreciated publicly traded stock made to public charities, by limiting the amount of the deduction to his or her tax cost in the donated shares.

For taxpayers in higher income tax brackets, the charitable deduction may be subject to phase-outs (the *Pease* limitation), which limit up to 80% of otherwise allowable deductions. However, the phase-out will not limit the non-tax charitable impact of the gift.

### Reducing Concentrations, Avoiding Capital Gains

Table 1 does not tell the whole story, however. Although gain on the sale of a stock concentration would be fully taxable, no tax is due if the same stock is instead contributed to charity. As Example 1 illustrates on the next page, it makes sense to consider carefully whether to donate cash, appreciated stock – or a combination of the two. To structure a gift that both meets your investment needs and maximizes your available charitable deduction, work closely with your investment advisor and your accountant.

## EXAMPLE 1: CHOOSING THE FORM A GIFT WILL TAKE – CASH, STOCK OR COMBINATION

Max and Marcy, a married couple in their 60s, have adjusted gross income (AGI) of \$300,000 per year. Their AGI is comprised of \$150,000 of capital gains and \$150,000 of ordinary income, making their marginal tax rate 33%. For 2015, they have earmarked \$750,000 for a charitable contribution, either in cash or in the form of a long-term concentration of publicly traded stock valued at \$750,000 with a \$0 basis.

	NO GIFT	\$750,000 CASH GIFT	\$750,000 STOCK GIFT	GIFT COMPRISED OF: \$700,000 STOCK \$50,000 CASH
<b>AVAILABLE CHARITABLE DEDUCTION</b>				
2015	\$0	\$150,000	\$90,000	\$140,000
YEARS 2016–2020	\$0	\$600,000	\$450,000	\$450,000
<b>TOTAL</b>	<b>\$0</b>	<b>\$750,000</b>	<b>\$540,000</b>	<b>\$590,000</b>
<b>CHARITABLE DEDUCTION TAX SAVINGS</b>				
2015	\$0	\$26,488	\$22,752	\$39,430
YEARS 2016–2020	\$0	\$97,019	\$85,543	\$85,543
<b>TOTAL</b>	<b>\$0</b>	<b>\$123,507</b>	<b>\$118,295</b>	<b>\$124,973</b>
<b>CAPITAL GAINS TAX SAVINGS</b>				
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$167,033</b>	<b>\$164,033</b>
<b>3.8% TAX ON NET INVESTMENT INCOME SAVINGS</b>				
<b>TOTAL</b>	<b>\$0</b>	<b>\$0</b>	<b>\$28,500</b>	<b>\$26,600</b>
<b>TOTAL TAX SAVINGS</b>				
2015	\$0	\$26,488	\$205,815	\$208,093
YEARS 2016–2020	\$0	\$97,019	\$108,013	\$108,013
<b>TOTAL</b>	<b>\$0</b>	<b>\$123,507</b>	<b>\$313,828</b>	<b>\$316,106</b>

\*If the charitable recipient is a private foundation, deduction for closely held stock is based on tax cost.

### Assumptions

AGI: \$300,000 per year

Capital Gains: \$150,000 per year

Ordinary Income: \$150,000 per year

Charitable Contribution: \$750,000

Applicable Cap Gains rates: 15% and 20%

**Funding Truth #2:**  
*Early philanthropic planning can play an important role in reducing the tax impact of a future liquidity event.*

For donors like Max and Marcy, who hold a concentration of highly appreciated stock, gifting a combination of cash and stock may be the best strategy. As shown on the previous page, this strategy is intended to result in total tax savings of approximately \$316,106, \$192,599 more than a cash-only gift, and \$2,278 more than a stock-only gift. Each situation is different and requires careful financial analysis. When making projections, you and your accountant will need to take into account factors such as expected income levels, anticipated income tax rates and availability of the five-year charitable contribution carryover, which allows you to carry over the contributions that you are not able to deduct in the current year because they exceed your adjusted gross income limits. In other words, you can deduct the excess in each of the next five years until it is used up, but not beyond that time.

**Alternatives to Outright Transfer**

In addition to funding outright transfers, appreciated long-term publicly traded stock is a good choice for funding wholly tax-exempt charitable vehicles such as charitable remainder trusts, private foundations and supporting organizations. In contrast, most charitable lead trusts are taxable – which means that funding with modestly appreciating stock is a better strategy than funding with highly appreciated securities.

**CLOSELY HELD STOCK, INCLUDING S CORPORATION STOCK**

**Creating an Integrated Exit Strategy**

For a variety of reasons, business owners rarely think about philanthropy in the early planning stages of a liquidity event. All too often, the sales contract is signed (and the huge gain later recognized) before charitable objectives resurface and serious charitable conversations begin. Example 2 illustrates how successful entrepreneurs can maximize both financial and personal satisfaction by integrating charitable strategies into the liquidation plan.

**EXAMPLE 2: CHOOSING THE BEST VEHICLE FOR A STOCK GIFT OF \$25 MILLION.**

Sam, age 75, is a widower and the sole owner of closely held \$50 million in XYZ coporation. Sam’s tax basis in the stock is zero. While Sam would like to contribute to charity, he also wants to provide for his five adult children – none of whom are involved in XYZ Corporation.

Unrelated third parties are interested in buying XYZ for cash, and Sam is ready to sell. No contract has yet been signed, however.

	OUTRIGHT GIFT	FIVE \$5 MILLION CHARITABLE REMAINDER TRUSTS	PRIVATE FOUNDATION	DONOR ADVISED FUND
Maximum available charitable deduction in year of transfer*	\$7,500,000	\$5,406,750	\$0	\$7,500,000
Capital gains tax avoided or deferred	\$5,000,000	\$5,000,000 deferred	\$5,000,000	\$5,000,000

\*Assumes \$25 million adjusted gross income in year of contribution; does not take five-year carryover into account.

\*\* Assumes children are 45 years old, with Unitrust payout of 5%.

It is important to note that, as illustrated in the example on the previous page, the income tax charitable deduction for transfers of closely held stock to a private foundation – or to a charitable remainder unitrust with a private foundation as beneficiary – is limited to tax cost, which here is zero. Note also that the actuarial value of the children’s share in the charitable trusts is approximately \$19.6 million, all of which will be subject to gift taxation. However, making gifts during life rather than death actually reduces the total estate *and* gift tax paid by the donor, since the gift and the tax have both been removed from the donor’s estate at death.

### **Special Concerns When the Closely Held Stock is S Corporation Stock**

It is not always easy for a donor to find a charity willing to hold closely held stock. For some charities, the issue is liquidity: the charity’s investment guidelines may not permit it to hold an illiquid asset. For others, the issue is potential liability as a corporate shareholder.

**Unrelated Business Taxable Income.** If the closely held corporation is an S corporation,<sup>1</sup> the charity’s major concern is likely to be incurring income tax. A special tax rule characterizes all income earned by an S corporation (and all gain from sale of S corporation stock) as “unrelated business taxable income” or “UBTI”<sup>2</sup> – and UBTI is taxable when received by an otherwise tax-exempt charity or charitable trust.<sup>3</sup> One solution to this problem is to terminate the S election before transferring the stock to a tax-exempt charity. Another is to find a charity that is willing to pay a little tax while waiting for the stock to be sold.

**Charitable Remainder Trust.** A further complication is that a charitable remainder trust is not a “permitted shareholder” of an S corporation.<sup>4</sup> This means that if S corporation stock is transferred to a charitable remainder trust, the corporation’s S election automatically will terminate, generally a tax disaster.

## **APPRECIATED LONG-TERM REAL ESTATE**

*A vacation home.*

*A rental property.*

*A personal residence.*

*Vacant land.*

***If real estate has declined in value, a better tax result can be achieved by selling to generate a tax loss and then donating the cash proceeds to charity.***

In theory, almost any type of appreciated real estate can be used to fund a charitable transfer. Which charitable vehicle is best? Many donors choose to contribute highly appreciated long-term real estate to charitable remainder trusts during their lifetime, receiving cash flow and deferring capital gains. So long as the remainder beneficiary of the charitable remainder trust is a public charity, the charitable deduction will be based on fair market value.

### **Income Tax Concerns**

As indicated in Table 1, long-term appreciated real estate is subject to the same 30% and 20% of adjusted gross income limitations as long-term appreciated stock. In addition, if there is a debt associated with the contributed real estate, gain on sale of the property may be characterized as UBTI. As discussed above, what makes UBTI so undesirable is that it subjects an otherwise tax-exempt charity or charitable trust to tax at rates ranging from those applicable to regular taxpayers, all the way up to 100%. Again, consultation with your tax advisers prior to funding is important.

**Funding Truth #3:**  
*Don't forget real estate as a funding alternative*

### **Environmental Concerns**

In addition to tax concerns, there are the standard environmental issues to consider. Neither a charity nor the trustee of a charitable trust will welcome a contaminated landfill (or an older building insulated with asbestos) that may subject them to unascertainable liability under federal or state environmental laws.

### **Liquidity Concerns**

A third concern is matching the liquidity needs of the charity or charitable trust with the marketability of the real estate. Private foundations, charitable remainder trusts, charitable lead trusts and supporting organizations all have yearly payout requirements. In addition, there will be expenses associated with the real estate itself – real estate taxes, routine maintenance and, in some cases, rehabilitation. If the real estate is not immediately marketable, some arrangement generally will have to be made for meeting cash flow demands. Sometimes, the solution is as simple as funding with both real estate and sufficient cash to meet anticipated cash flow needs until the property is sold. However, if unexpected cash flow needs arise, the donor may have to come to the rescue with additional cash infusions. Additional complications will arise if the tax rules forbid additions to a charitable trust, as they do in the case of a charitable remainder annuity trust. Your tax advisors will be familiar with these rules and will be able to advise you.

### **Qualified Conservation Contributions**

Another form of real estate contribution is the qualified conservation contribution. This is broadly defined to include not only contributions of land and buildings but also easements that preserve outdoor recreation areas, open space, natural habitat and historically important land areas and structures. Contributions of real estate interests to governmental agencies or charities may qualify under this provision, subject to a host of highly technical requirements.<sup>5</sup> Donors who are considering qualified conservation contributions should talk to their tax advisors about making the donation.

### **COLLECTIONS OF ART, COINS AND OTHER VALUABLE PERSONAL PROPERTY**

Many collectors find it difficult to think about parting with a beloved collection of art, coins or other valuable personal property. But unless disposition is carefully thought through, individual pieces may not be properly preserved and maintained after the owner's death – or the collection as a whole may be dispersed. In the right situation, a well-planned transfer to charity – either during life or at death – may be the answer. In general, early communication with the recipient charity is critical. It is important to verify, for example, that the intended recipient wants the collection and has the resources to assume responsibility for it. If the intended recipient is unable or unwilling to accept the gift, it is important to know sooner rather than later.

### **The "Related Use" Test**

The key to maximizing the donor's income deduction is that the collection be used by the donee for a purpose related to the donee's charitable purpose.<sup>6</sup> For this reason, it is generally most appropriate to contribute a collection outright to a museum, school or university. If the related use requirement is not met, your income tax charitable deduction will be limited to the tax cost of the property, which may be much less than fair market value.

Similarly, it does not make sense to attempt to fund a charitable remainder trust or private grant-making foundation with a collection during life. Because the charitable beneficiary cannot use trust assets during the income term, the donor's income tax charitable deduction will be limited to tax cost. Moreover, the trust will lack liquidity with which to make required payments.

#### **Funding Truth #4:**

Transfer of collections  
require advance planning.

#### **Qualified Appraisals**

With careful planning, a substantial income or estate tax deduction will be available on the transfer of a collection to charity. Whether the transfer is made during life or at death, a qualified appraisal of the collection will be required, and failure to adhere to the tax law's detailed requirements will jeopardize the donor's entire charitable deduction.<sup>7</sup>

#### **Put it in Writing**

For both personal and tax reasons, you should seriously consider a written agreement with the donee detailing how your collection will be displayed and maintained. Not only will this bring you peace of mind, it may save your income tax charitable deduction.<sup>8</sup>

#### **PATENTS, TRADEMARKS AND OTHER INTELLECTUAL PROPERTY**

When contributing intellectual property to charity, the immediate challenge is to correctly identify the interest being transferred. For example, is the donor transferring the copyright to a piece of music or an interest in the royalties? Good advice from an intellectual property lawyer at the outset can prevent later misunderstandings or litigation.

If the contribution is a lifetime transfer, the donor must contend with burdensome income tax charitable deduction rules.<sup>9</sup> The initial charitable deduction is limited to tax cost; additional deductions – based on the amount of income the donee receives from the property – are available in the 10-year period after the date of the contribution. This procedure requires extensive reporting between the donee, the donor and the IRS, and the potential for miscommunication and misreporting makes this a less than ideal provision.

In contrast, a transfer of intellectual property at death is more straightforward from a tax perspective. An estate tax charitable deduction is available for the fair market value of what is transferred.

#### **RETIREMENT ASSETS**

Distributions from retirement plans, such as pension plans, IRAs and 401(k) plans, typically are taxed as ordinary income to the recipient, making them relatively undesirable from a tax standpoint. For this reason, they make ideal assets to contribute to charity. Unfortunately, donors generally are allowed to make direct distributions from IRAs and pension plans to charity *only at death*. As a result, funding a lifetime transfer to charity with retirement assets typically has meant taking a taxable distribution from a pension plan or IRA and contributing the proceeds to charity. Tax law limitations (including limits on itemized deductions) generally prevented the charitable deduction from completely offsetting the income recognized on withdrawal, making this a tax-inefficient process for most.

#### **A Permanent Opportunity**

Now permanent, a special rule,<sup>10</sup> when in effect, allows taxpayers over age 70½ to distribute up to \$100,000 per year directly to a qualified charity from their IRA accounts. No income is recognized on the transfer and no charitable deduction is available. Distributions must be “qualified charitable distributions,” a term of art that does not include distributions to supporting organizations, donor advised fund accounts, private foundations, charitable remainder trusts and charitable lead trusts. This opportunity applies only to IRAs: it does not apply to other types of retirement assets, such as pension or 401(k) plans. Because this rule is temporary and has expired and then been extended a number of times it is necessary to determine whether the rule is in effect for a particular year.



SITUATION	SOLUTION
Leveraging a “triggering” event Nora will be 70½ on December 1, 2016. Having discussed her financial requirements with her team of advisors, she is confident she can maintain her standard of living and contribute to charity.	Value: Tax-efficient charitable contribution. On December 2, 2016, Nora directs that \$100,000 be withdrawn from her traditional IRA and distributed directly to her favorite public charity. The \$100,000 distribution counts towards satisfying Nora’s required minimum distribution for 2016, but is not taxed to her as ordinary income.

### Employer Stock

Another excellent philanthropic opportunity is available to those holding appreciated publicly traded employer stock in one or more retirement plans. On retirement, the employee takes a lump-sum distribution of the company stock from the retirement plan, paying ordinary income tax on the stock’s basis. The stock is then contributed to a charitable remainder trust where significant gain on the net unrealized appreciation is deferred and diversification is facilitated.

### Funding Truth #5:

*Beneficiary designations deserve special attention.*

### Beneficiary Designations

At death, a well-drafted beneficiary designation is the key to a successful charitable transfer and to minimizing income tax for your beneficiaries. Charity can be named as primary or contingent beneficiary, as you prefer. Sometimes post-death disclaimers are used for maximum flexibility, allowing a contingent charitable beneficiary to become a primary beneficiary under the right circumstances. Unless the beneficiary designation is well crafted, however, this type of sophisticated planning will not be available. Best advice: enlist the help of a competent estate planning attorney to make sure your beneficiary designations work as you expect them to.

### EMPLOYEE STOCK OPTIONS

Employee stock options are yet another potential alternative for funding your philanthropy. Though incentive stock options cannot be transferred to charity during the employee’s life, they may be transferred at death “by will or by the law of descent and distribution.”<sup>11</sup> A charitable deduction will be available based on the value of the option at the date of death.

In contrast, the terms of the particular employer’s plan may allow nonqualified employee stock options to be transferred during life. This means the employee would recognize income (and an offsetting charitable deduction) when the charity exercised the option.

### ALTERNATIVE INVESTMENTS

Many portfolios include not only stocks and bonds but also alternative investments such as hedge funds or venture capital funds. New concerns are likely to arise if these are considered as funding sources for philanthropy:

- *Is the specific charity or charitable trust a permitted holder of the investment under the securities laws?*
- *Do the charity’s investment and acceptance guidelines allow it to hold the fund as an investment?*

There is also the question of the unrelated business taxable income, which alternative investments may produce if actively engaged in a business enterprise. The impact of UBTI varies depending on the nature of the charitable donee. For example, otherwise tax-exempt public charities or private foundations will pay tax on UBTI at regular income tax rates. On the other hand, a charitable remainder trust will pay a 100% excise tax on any UBTI received.<sup>12</sup> For non-grantor charitable lead trusts, the tax result is not quite as draconian: UBTI may reduce the amount of any otherwise available income tax charitable deduction.<sup>13</sup> The ultimate question is: *Does the after-tax yield make the investment inappropriate?*

For assets that are not publicly traded, a further concern is *valuation* – both at inception (for the income tax charitable deduction) and during the term of the trust. For example, non-publicly traded securities in a private foundation generally need to be valued at least annually.

Finally if the recipient is a private foundation, donor advised fund or supporting organization, there is the question of whether such holdings will be characterized as *excess business holdings* subject to the excess business holdings excise tax. In general, red flags should go up if the charitable entity, together with related family members, own more than 20% of the stock or profits interest in the business.<sup>14</sup>

## CONCLUSION

When considering how to fund philanthropic transfers, you may confront issues ranging from the relatively simple to the complex, with cash or publicly traded stock at one end of the continuum and more esoteric assets at the other. The more complex the asset, the more time you will need to allow for adequate planning; planning for a qualified conservation easement, for example, may take two years or more. As you identify and consider alternatives, you will want to be sure to consider your overall financial and philanthropic goals as well as the tax impact of each. In the end, you, your family and your charitable donee will reap the benefits of your careful research, thoughtful planning and detailed execution.

## ABOUT THE AUTHOR

Suzanne L. Shier is the wealth planning practice executive and chief tax strategist/tax counsel for the Wealth Management business unit at Northern Trust and serves on the Wealth Management operating group. She is responsible for leading Wealth Planning Advisory Services and for providing thought leadership on wealth planning and tax issues of interest to clients and their advisors, with a special emphasis on wealth planning and tax policy, legislation, strategies, trends and developments.

Prior to joining Northern Trust, Suzanne spent 26 years as a partner at Chapman and Cutler LLP in Chicago, ultimately leading the firm's trusts and estates practice, representing individuals, charitable organizations and corporate fiduciaries in a full range of wealth planning and fiduciary matters, including philanthropy, domestic and international wealth planning, and fiduciary administration.

Suzanne is an adjunct professor in the Master of Laws in Taxation Program at Northwestern University Law School and also a frequent speaker and author. She has been quoted in publications such as The Wall Street Journal and Bloomberg and has received numerous professional honors and recognitions, including selection for inclusion in Best Lawyers in America in Trusts and Estates. Suzanne earned her bachelor's degree with distinction in economics and sociology from the University of Michigan. She received her law degree, cum laude, from the Loyola University Chicago School of Law and a master of laws in taxation from the DePaul University College of Law.

In the civic community, Suzanne supports diversity and education initiatives. She has been involved with the executive committees and boards of directors of Gads Hill Center, and the Chicago Coalition of Women's Initiatives in Law. Suzanne is chairperson of the board of directors of Chicago Scholars, a college access program for high potential urban students, and a trustee of Hope College.

Suzanne is a fellow of the American College of Trust and Estate Counsel and a member of the Chicago Bar Association, Chicago Estate Planning Council, American Bar Association, International Bar Association and the International Society of Trust and Estate Practitioners.

## ABOUT NORTHERN TRUST

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Northern Trust, founded in 1889, has earned distinction as an industry leader, combining exceptional service and expertise with innovative capabilities and technology. For more information, visit [northerntrust.com](http://northerntrust.com).

## FOOTNOTES

1. *When a closely held corporation elects S corporation status, income and gain flow through to corporate shareholders and are not generally taxed at the corporate level.*
2. *IRC § 512(e)*
3. *See, IRC § 511-514*
4. *Rev. Rul. 92-48, 1992-1 C.B. 301 and IRC § 1361(e)(1)(B)(iii)*
5. *See, generally, IRC § 170(h)*
6. *IRC § 170(e)(1)(B)*
7. *IRC § 170(f)(11)(A) and (E)*
8. *Under IRC § 170(e)(7), if your collection is sold within three years of contribution, you must substantiate, through a rigorous certification process, that either the property was in fact used for a related use or that the intended use became impossible or infeasible to implement. If the certification is not made, the charitable deduction is reduced to tax cost or "recaptured" as ordinary income.*
9. *See IRC § 170(e)(1)(B)(iii) and (m)*
10. *IRC § 408(d)(8)*
11. *IRC § 422(b)(5)*
12. *IRC § 664(c)(2)*
13. *IRC § 681*
14. *IRC § 4943*

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