

Year-End Charitable  
Contributions:

To Give Or Not To Give

By Charles Lowenhaupt

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December is always a special time of the year. People are thinking about the holidays, family and celebration. It is also a time when individuals of significant wealth are often consumed with year-end tax planning and whether and how to make gifts to charity, children and grandchildren.

This year in particular, I've heard many people wondering whether they should make big gifts to their children and/or grandchildren and future generations (the "Dynasty Trust"). They worry that the gift and estate tax exemptions, now at their highest ever, will soon shrink and may even be reduced retroactively if a new "anti-wealth" president takes office.

Many trusts were created between 1926 and 1932, a period when the gift tax was repealed. Many of those had been created with substantial gifts and through investments in portfolios of stocks and bonds or privately held companies. Over the years, the trusts became huge because they were free from estate taxes. A mantra for many of my grandfather's clients, who were constrained only by the Rule Against Perpetuities, was this: "I will create a trust and throw the benefits as far into the future as possible."

Today, we see many large so-called "Gallo Trusts" created between 1986 and 1989, when \$2 million dollars could go into trust for a grandchild and remain free of the Generation Skipping Transfer Tax. In the late 1980s, substantial wealth holders created as many trusts as they had grandchildren. Those trusts have also become huge.

The history of the gift and estate tax regimen is full of so-called loopholes, which wealthy taxpayers take advantage of in order to take advantage of in order to make substantial lifetime gifts.

### What is the Wealth For?

Indeed, now may again be the time to make large gifts – at least from a tax standpoint. But saving taxes should never be the starting question in gifting. Instead, the starting question should be this: What is your wealth for? How should you use it to accomplish its purposes now and in the future?

I learned this lesson about the purpose of wealth early in my career. A fellow came into the office years ago. He had invested in a friend's business and over the course of 30 years, his investment grew to \$1 billion. I asked him why he was coming to see me, and he said he wanted to save taxes. I told him we could do that. After all, my grandfather was America's first attorney to concentrate in tax law, so we had been saving taxes for clients for 100 years. But then I said: "You have told me what your money is not for – taxes. But what is it for?" And I answered, "Yes." And then he said: "Well, what are my choices?"

This is an excellent question, and it is the central one in managing significant wealth. If there is any universal answer regarding multi-generational wealth, it is this: Wealth should ensure that everyone can be all he or she can be, live a functional life, and make a meaningful contribution to society with their energy and their wealth.

## Know Your Donee?

Before you make that big gift and save taxes, you should ask yourself lots of questions about the recipients – the donees.

What makes sense for them? How will the money help them move on in life? Are trust babies what you want to create? How does a good education help create functionality?

And before you make that gift, be honest with yourself. Do you want to control those people using money? Or, do you want them to navigate their own way in the world? Is it smart to make an outright gift to a 21-year-old so that if that individual loses the money, he or she still has time to get on with life? Or do you want a trust hanging over their heads until an age like thirty? Should the gift come with strings? Will that change the person's trajectory?

If the goal is helping future generations self-actualize, that big gift may or may not help. I have seen big gifts that give a person the freedom to chase a dream; I have also seen big gifts deprive the donee of the will to chase any dream.

These are considerations to think about before you make that big gift. If it makes sense, by all means write that big check. You may sneak under the wire and may also create many years of love and appreciation.

Think long and hard and strategically before you give. But whatever you do, enjoy the holidays.