Susquehanna Valley Planned Giving Council

Presents

Handling Complex Gifts

James E Connell FAHP, CSA

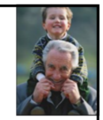
James E. Connell & Associates
Charitable Estate and Gift Planning Specialists
phone: 910-295-6800 fax: 910-295-6866

Thomas W. Bergen, Esq.

HARTMAN UNDERHILL & BRUBAKER LLP
ATTORNEYS AT LAW

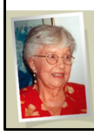
Mark A. Vergenes, President

MIRUS FINANCIAL PARTNERS



Handling Complex Gifts, Real Estate and other Assets

James E. Connell FAHP, CSA
Connell & Associates
Charitable Estate and Gift Planning Specialists
Pinehurst, North Carolina



For copy of all slides in download form
and to sign up for newsletter
www.connellandassoc.com/articles

James E. Connell & Associates
Charitable Estate and Gift Planning Specialists
phone: 910-295-6800 fax: 910-295-6866

Current Events
Services
Agreements
Articles
Biography
Clients
Contact
Helpful Links
IRS Downloads
Newsletter Signup
Newsletter Current
Newsletter Archives
Planned Giving Mentor
Of Counsel: Winton C. Smith, Jr., JD

James E. Connell and Associates is a consulting service dedicated to building endowments for America's nonprofit organizations using charitable estate and gift planning techniques.

Demographic changes in America are creating an unparalleled opportunity for organizations to gain significant gifts by using charitable gift and estate planning techniques.

James E. Connell and Associates maintain an active National Board of Advisors composed of attorneys, financial advisors, insurance agents, trust officers and fund raising professionals skilled in charitable gift development. The advisor network is available to clients to facilitate the cultivation, solicitation and development of charitable estate planning gifts. Connell & Associates is a member of the following organizations, click on the logo for more information.

North Carolina Planned Giving Council

Member National Committee on Planned Giving

Association for Healthcare Philanthropy. Connecting People • Enriching Lives

CSA Certified Senior Advisor (CSA)

For Further Information

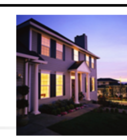
To request further information on our estate planning and planned gift services or to discuss your current needs contact the office listed below.

JAMES E. CONNELL AND ASSOCIATES
Charitable Estate and Gift Planning Specialist

Main Office	***Northeast Office***
P.O. Box 3335 Pinehurst, North Carolina 28374-3335	20982 Bayside Avenue Rock Hall, Maryland 21661
Phone: 910-295-6800	Phone: 410-639-7758

http://www.connellandassoc.com/index.html

Why Real Estate



- Intergenerational transfer of wealth
- 75% of individuals over age 65 own one or more homes
- Most seniors have no debt on property
- Personal residences comprise about 10% of all estates
- Other real estate comprise about 7% of all estates

Non-Cash Assets

Individual Non-Cash Contributions 2005

Appreciated Property 2005	Number of Returns	Number of Donations	Total Amount	Amount Per Return	Average Gift
Corporate Stock	181,192	399,828	$16,336,601,000	$90,162	$40,859
Mutual Funds	7,736	11,007	$669,646,000	$86,557	$60,401
Real Estate	7,654	8,203	$1,183,888,000	$154,676	$144,320
Land	9,883	10,447	$2,915,322,000	$294,974	$278,265
Art & Collectibles	110,632	178,891	$1,244,906,000	$11,253	$6,979
Totals	317,097	608,376	**$22,350,363,000**	$70,484	$36,738
Bequests for 2005			**$23,450,000,000**		

Sources: *Statistics of Income Bulletin, Spring 2008 & Giving USA*

Age	2004	2005	Difference
Under 35	$2,045,066	$2,231,510	$186,444
35-44	$5,605,235	$6,071,559	$466,324
45-54	$8,510,992	$8,949,908	$438,916
55-64	$8,475,131	$9,756,707	$1,281,576
65+	**$12,552,736**	**$14,060,948**	**$1,508,212**

What is in taxable estates 2009

Highlights of the Data

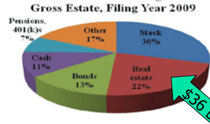
- Due primarily to increases in the filing threshold, the number of estate tax returns filed decreased from more than 108,000 in 2001 to fewer than 34,000 in 2009.
- For Filing Year 2009, estates with gross assets above the filing threshold reported over $194 billion in assets.
- Almost 58 percent of 2009 estate tax decedents were male. Just under half of all decedents were married, while another 38 percent were widowed. Only 13 percent of decedents were single, divorced, or separated.
- Over 97 percent of the estates of married decedents, and 43 percent of estates overall, reported deductions for marital bequests, for a total of $62 billion. Only 10 percent of estates with a marital bequest owed estate tax.

$16 billion

About 19 percent of estates claimed a charitable bequest deduction, for a total of $16 billion. Estates with $20 million or more in gross estate accounted for over 58 percent of this total, despite representing only 3 percent of filers.

- After accounting for marital and charitable bequests, as well expenses and debts of the estate, less than half of the estates filing in 2009 owed estate tax. The combined estate tax obligation of these estates was nearly $21 billion.

Assets as a Percentage of Gross Estate, Filing Year 2009



Products

- Read a report about estate tax returns filed between 2001 and 2007.
- Annual statistical tables contain detailed information on assets, deductions, and tax items for returns filed during each calendar year.
- Year-of-death tables display data for returns filed for decedents from a given year.
- Articles from the SOI Bulletin and other research papers are available to download or print.
- Estimates of the personal wealth of part of the living population are derived from estate tax data

Source: IRS 2010 Statistics of Income Bulletin

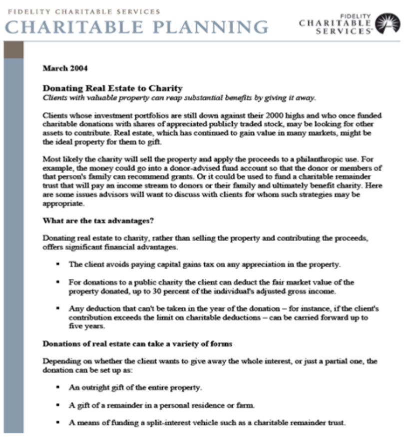
Where do you start?

Start with the value of your real estate, home, lots, farm, investment property

Policies and Procedures

- Generals and Chefs have plans and recipes for success…. Development department also needs a plan
  - What types of real estate and non-cash gifts to take?
  - What outright gift strategies and life income plans to be offered?
  - Limits of authority and authority for disposition
  - Reporting requirements
  - Appraisal requirements
  - Environmental requirements
  - Disposition procedures
  - Donor reporting procedures
  - Real estate information check list

planned giving



FIDELITY CHARITABLE SERVICES

CHARITABLE PLANNING

FIDELITY CHARITABLE SERVICES

March 2004

Donating Real Estate to Charity

Clients with valuable property can reap substantial benefits by giving it away.

Clients whose investment portfolios are still down against their 2000 highs and who once funded charitable donations with shares of appreciated publicly traded stock, may be looking for other assets to contribute. Real estate, which has continued to gain value in many markets, might be the ideal property for them to gift.

Most likely the charity will sell the property and apply the proceeds to a philanthropic use. For example, the money could go into a donor-advised fund account so that the donor or members of that person's family can recommend grants. Or it could be used to fund a charitable remainder trust that will pay an income stream to donors or their family and ultimately benefit charity. Here are some issues advisors will want to discuss with clients for whom such strategies may be appropriate.

What are the tax advantages?

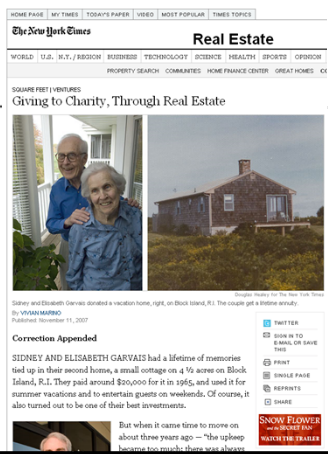
Donating real estate to charity, rather than selling the property and contributing the proceeds, offers significant financial advantages.

- The client avoids paying capital gains tax on any appreciation in the property.
- For donations to a public charity the client can deduct the fair market value of the property donated, up to 30 percent of the individual's adjusted gross income.
- Any deduction that can't be taken in the year of the donation – for instance, if the client's contribution exceeds the limit on charitable deductions – can be carried forward up to five years.

Donations of real estate can take a variety of forms

Depending on whether the client wants to give away the whole interest, or just a partial one, the donation can be set up as:

- An outright gift of the entire property.
- A gift of a remainder in a personal residence or farm.
- A means of funding a split-interest vehicle such as a charitable remainder trust.



HOME PAGE | MY TIMES | TODAY'S PAPER | VIDEO | MOST POPULAR | TIMES TOPICS

The New York Times **Real Estate**

WORLD | U.S. | N.Y. / REGION | BUSINESS | TECHNOLOGY | SCIENCE | HEALTH | SPORTS | OPINION

PROPERTY SEARCH COMMUNITIES HOME FINANCE CENTER GREAT HOMES

SQUARE FEET | VENTURES

Giving to Charity, Through Real Estate

Douglas Healey for The New York Times

Sidney and Elisabeth Garvais donated a vacation home, right, on Block Island, R.I. The couple get a lifetime annuity.

By VIVIAN MARINO

Published: November 11, 2007

Correction Appended

SIDNEY AND ELISABETH GARVAIS had a lifetime of memories tied up in their second home, a small cottage on 4 ½ acres on Block Island, R.I. They paid around $20,000 for it in 1965, and used it for summer vacations and to entertain guests on weekends. Of course, it also turned out to be one of their best investments.

But when it came time to move on about three years ago — "the upkeep became too much; there was always

TWITTER
SIGN IN TO E-MAIL OR SAVE THIS
PRINT
SINGLE PAGE
REPRINTS
SHARE

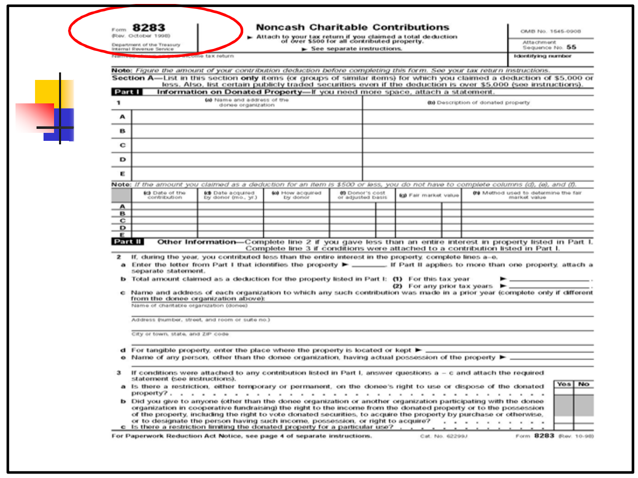
SNOW FLOWER and the SECRET FAN WATCH THE TRAILER

What is your real estate worth?

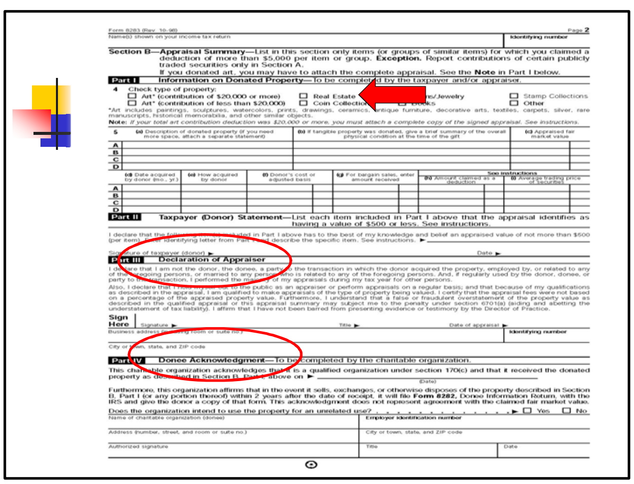
- Appraisal requirements
- Qualified appraiser
- Property description
- Fair market value
- Comparable sales and other specifics
- Environmental issues

What is your real estate worth?

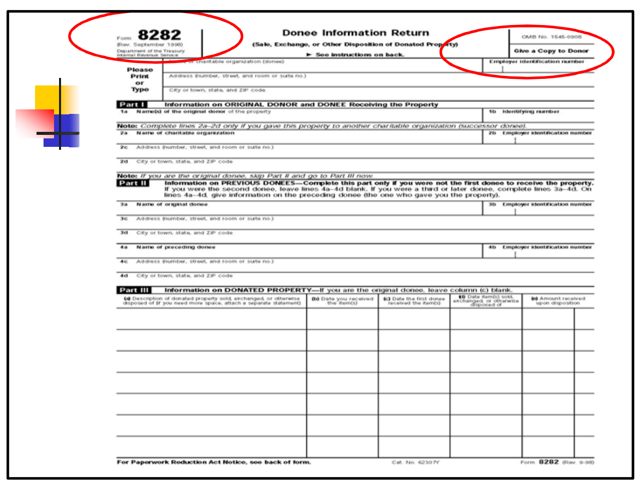
- IRS 8283 form
  - $500 or more of property
    - $5,000 or more signed by appraiser
    - Charity signature to acknowledge receipt of property
- IRS 8282 form for charity
  - 125 days of sale of property
  - When sale is within three years of gift date
- Appraisal requirements
  - 60 day rule or tax filing rule
- Charity disqualified party and restricted from doing appraisal



Form 8283 Noncash Charitable Contributions

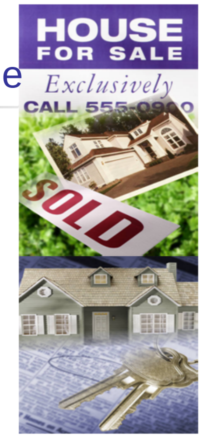


Form 8283 Page 2



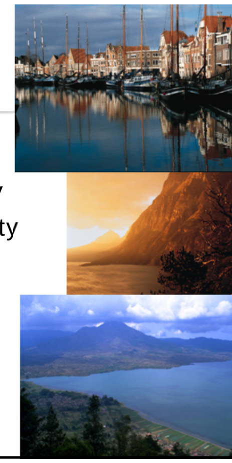
Form 8282 Donee Information Return

Types of Real Estate



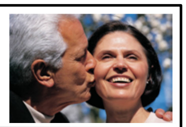
- Personal residence
- Vacation home
  - Non-rental
  - Rental property
- Commercial property
  - Used in taxpayers business
    - Motels, recreational parks
- Condominium
- Farmland
- Investment real estate
  - Apartments, office buildings
- Raw land

Gift Strategies



- Bargain Sale
- Life Estate
- Gift Annuity for 85% FMV
- 18 month Deferred Annuity
- Installment Sale
- Unitrust
  - Net Income, FLIP
- Unitrust and Sale
- Charitable Lead Trust

Jim and Ann Sale and Unitrust



- Jim an investment advisor
- Ann a retired school teacher
- Own 239+ acres in Jasper County, Iowa
- Inherited from mother, bought out sister's interest
- Tenant farmer, sharecrop agreement, Sharpe Farms, Inc.
- $33K annual income
- Value $944,400, cost $194,709
- No mortgage

Objectives

- Keep 100% of asset working for them during retirement years
- Cash in hand to improve Minnesota lake property
- Lessen taxes and administrative expenses
- Support two charities, College and Hospital
- Attorney first time doing a CRUT, Iowa attorney for property transfer, CPA review

Jim and Ann, Sale and Unitrust

- Multiple proposals, multiple reviews
- Two life gift annuity
- FLIP CRT
- Gift and sale
- FLIP CRT and Sale
  - How much to sell?
  - How much to CRT?

SALE AND UNITRUST -- DATA ENTRY

Rate Of The Month	September 4.2%	Income Tax%	40.26 %
Gift Date	11/26/2008	Capital Gain% (Income and capital gains rates are assumed.)	22.26 %
Grantor	Jim	Property Value	$944,000
Birth Date	3/16/1936	Cost Basis	$194,709
2nd Person	Anne	Current Return	3.00 %
Birth Date	1/7/1940	Trust Return	8.199872 %
		Net Quarterly Return	8%
Frequency	Quarterly	UT Payout%	6.50 %
		Net Quarterly Growth	1.5%
Cash Rec'd	$566,400	Sale of Home	NO

Options: Future Tax Rate 31.00% -- 50% Ord. 40.26%, 50% Cap. Gain 22.

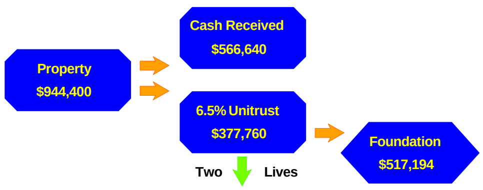
WORKSHEET -- SALE/UNITRUST

Property Value (PV)	$944,000		Alloc. Sale Costs	$0
Cost Basis (CB)	$194,709		Unitrust Value	$377,600
Cash Received (CR)	$566,400		Alloc. Gain	$299,716
Allocated Sale Costs	$0	(CR/PV x CB)	Unitrust Deduction	$129,521
Allocated Basis	$116,825			
	$0			
Adjusted Basis	$116,825			
Long Term Gain	$449,575			

	NO TRUST		SELL 60% UNITRUST
Value	$944,000		$944,000
Basis	$194,709		$194,709
Cash Received	$944,000		$566,400
Adjusted Basis	$194,709		$116,825
LTCG/Ord. Gain	$749,291	$47,930 tax	$449,575
LTCG/Ord. Tax	$166,792		$100,075
Tax Savings	$0		$52,145
Net To Donor	$777,208	CASH	$518,470

SALE AND UNITRUST

Jim - Age 73 Ann - Age 69



1. Gift $377,760 to trust. Bypass up to $299,876 gain may save $66,752. Tax deduction $129,575. Taxable gain $449,815 on cash part. Net Cash to donors $518,678.
2. Unitrust Income of $24,554. Increased income $13,221 over prior $11,333 income. Estimated income in 21.1 years $604,216. Effective return rate 7.54%.
3. If trust earns 8%, pays 6.5%, then grows by 1.5%. After two lives, trust passes without probate to charity.

Joanna and her C-corp

- Joanna, DOB April 25, 1928
- Initial contact: January 2007, physician group buyer in waiting, falls through, search for new buyer
- Date of gift: March, 2008
- Age at gift date 70, Florida resident
- Parents deceased, divorced
- C corp owns property in Morgantown, WV
  - Files WVA corporate tax return
- Desires freedom from management, taxes, gift to hospital
- Net worth approx. $2.5 million
- Hospital has no interest in property

Joanna and her C-corp

- Advisor team
  - Morgantown attorney
  - Florida attorney
  - Morgantown CPA
  - Florida CPA
  - Investment advisor
  - Real estate broker
  - Philanthropic advisor

  Shifting and unsure objectives

Joanna and her C-corp

- C corp facts
- 75 shares
- Cost basis of shares individually owned, inherited from father, divorce settlement = $100,114 or $1,334 per share
- C corp asset: Multiple Properties, cost basis $242,536 almost fully depreciated

A SUMMARY APPRAISAL REPORT

OF

A MULTI-FAMILY PROPERTY DEVELOPMENT
CHERRY LANE & CHARLES STREET
NORTH HILLS AREA
MORGANTOWN, WV
MONONGALIA COUNTY

OWNERSHIP ENTITY
BELLOTTE & HERRIG HOME BUILDERS, INC.

PROSPECTIVE PURCHASER/BORROWER
LYCO PROPERTIES

FOR

BELLOTTE & HERRIG HOME BUILDERS, INC.
& THE MONONGALIA GENERAL HOSPITAL FOUNDATION, INC.
C/O MR. JAMES GIANOLA, ESQUIRE
1714 MILEGROUND ROAD
MORGANTOWN, WV

BY

J. MARK DAY
DAY-WARASH APPRAISAL SERVICES, LLC
1225 UNIVERSITY AVENUE
MORGANTOWN, WV

AS OF

FEBRUARY 5, 2008

Joanna and her C-corp

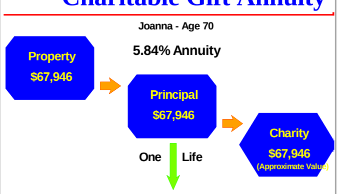
- Property facts
  - Two adjoining parcels .5963 acres and 1.224 acres
  - 10 townhouse apartments
  - 2 two bedroom duplex units
- Fair Market Value
  - Income approach
  - Sale approach
  - $775,000
- Property contains a right-a-way through the hospital property granted in the 70s which the hospital would like to go away
  - Buys for $100,000, proceeds to C corp

Solutions

- 1. Gift corporate stock to hospital for gift annuity
  - Stock redeemed by C corp, retired as treasury stock
  - Valuation discounts required
- 2. C corp (Manor Heights, Inc.) real estate donated to set up a term FLIP Charitable Remainder Unitrust paying 7% for 20 years
  - Income payable to C corp, distributed to shareholder (Joanna)
  - C corp real estate sells for $713,000, proceeds to CRT, net cash after settlement charges $684,254, buyer finances $652,500
  - C corp personal property sells for $12,000, proceeds to C corp

Charitable Gift Annuity

Charitable Gift Annuity



1. Gift property to charity. Partial bypass $30,572 gain may save $2,047. Income tax deduction of $30,325 may save $8,491.
2. Annuity of $3,968.06 for one life. Tax-free amount $1,309.48. Estimated one life payout of $67,457. Effective payout rate 7.9%
3. Semiannual payments for one life. Property passes to charity with no probate fees. There are also no estate taxes.

Joanna XXXXXXXX SS# XXXXXXXX

"Statement attached to Schedule A (Form 1040)"

On March 15, 2008, I, Joanna XXXXXXX, established a Charitable Gift Annuity Agreement (copy attached) with The Foundation XXXXXXXXXXX, Inc., Morgantown, WV a West Virginia not-for-profit charitable corporation. The Foundation XXXXXXXXXXX, Inc. is a federal tax exempt 501(c)3 organization, IRS tax # 55-XXXXXXXXXX.

The gift was securities held long term in the amount of $67,946.00
Assets transferred: 28 Shares, Manor Heights, Inc., a C corporation
Assets value determined by appraisal dated January 31, 2008 (copy attached)
Asset cost basis: $37,374.00
IRS form 8283 attached

The gift provides payments for life to the following:
Joanna XXXXXXX, date of birth, April 25, 1928

Payment in an annual amount of $3,968.06, payable semiannually in the amount of $1,984.03 on the last day of March, June, September and December. The first payment is for the period March 15, 2008 to December 31, 2008 is $1,984.13.

Income tax as follows:

Taxation of Annuity Payments				
Year	Ordinary Income	Capital Gain	Tax Free Income	Total Income
2008	$793.61	$535.68	$654.74	$1,984.03
2009-2023	$1,587.22	$1,071.36	$1,309.48	$3,968.06
2024	$3,249.79	$1,071.36	$396.82	$4,717.97
2025+	$3,968.06	$0.00	$0.00	$3,968.06

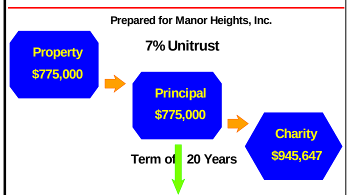
The donor select the alternative AFR rate for January 2008 4.2%. The charitable contribution deduction for this gift is $ 30,324.00 (calculations attached).

The charitable contribution deduction is deductible up to 30% of the donor's adjusted gross income with a five year 30% carry forward of any unused deduction.

Apart from the annuity described above, the present value of which is $37,621.29, donor has received no goods or services in return for this gift. Keep your original annuity agreement and this Summary of Accounting and Tax Information in your files as your acknowledgment for this gift.

Term Charitable Remainder Unitrust

TERM OF YEARS UNITR



1. Transfer and sell Tax-Free. Bypass up to $532,464 gain may save $186,362. Income tax deduction $188,907 may save taxes of $66,117.
2. Unitrust Income of $54,250. Increased income $31,000 over prior $23,250 income. Estimated income in 20 years $1,194,531. Effective return rate 7.65%.
3. If trust earns 8%, pays 7 then grows by 1%. After the term of 20 years, trust assets pass without probate to charity.

Manor Heights, Inc Employer Identification Number (EIN)- 55-0488904

On March 6, 2008, I JoannaXXXXXXXX, initial trustee and grantor established an irrevocable Charitable Remainder Trust to comply with Revenue Procedure 2005-53 and Section 664(d)(2) and (3), and Treasury Regulation Section 1.664-3 of the Internal Revenue Code of 1986, as amended (copy of trust attached).

The trust tax identification number is 26-6268588

The trust names The Foundation XXXXXXXXXXXXX, Inc, 1200 XXXXXXXXXXXXDrive, Morgantown, West Virginia 26505 a tax exempt 501(c)3 charitable organization IRS tax exempt #55-0570338 as irrevocable beneficiary.

Unitrust is a FLIP Term of Years Unitrust. Unitrust term is 20 years. The "triggering event" is the sale of all property described in Schedule A of the Manor Heights, Inc. Charitable Remainder Unitrust.

Assets transferred: real estate with an appraisal value on February 5, 2008 of $775,000 (copy of appraisal attached).

Real estate consisted of two adjoining parcels being 0.5963 acres improved with two unit residential duplex and a 1.224 acre parcel currently improved with a ten (10) unit townhouse style apartment complex with two detached buildings.

Income payable to recipient: Manor Heights, Inc.

Charitable Remainder Trust payout rate: 7.0% of net income prior to the sale of the property listed in Schedule A and thereafter subsequent to the "Triggering Event," 7% of the net fair market value as of the January 1st fair market value each year.

Charitable Remainder Trust payment frequency: quarterly

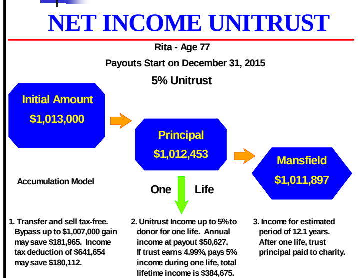
Charitable contribution deduction: $188,907.00

The initial trustee elects the AFR for January, 2008 of 4.4%, the charitable contribution deduction is deductible by the corporation up to 10% of income with a five year 10% carryforward of any unused deduction (copy of calculation attached).

Rita and her proposed Mineral CRT

- Work in progress for Mansfield University
- Rita dob 3-13-1934 (77), Philadelphia
- Widow with two estranged children
- 180 acres in Tioga county
  - Purchased in 1958,1961,1963 – cost basis $6,000
  - Rental trailer and rustic cabin on property
  - Original intent was to develop a school/camp for children
  - Has current wind and gas lease
- FMV appraisal $1,013,000, Dec 2010
- Goals: Preservation, income from gas royalties

Strategy: Net Income Makeup CRT



- 7% payout = $544,538 deduction, larger makeup account
- 10% payout = $433,635 deduction, larger makeup account
- Capital gains offset strategy, $1 deduction offsets $1.86 (28% bracket)

What is a Charitable Gift Annuity?

- Contract with Charity..gift arrangement
- Assets are irrevocably transferred
- Donor receives fixed guaranteed lifetime payments
- Payments begin immediately
- Payments may be deferred to a specific or variable date
- Payments depend upon age, number of beneficiaries and type of annuity
- Part Gift – Part Investment

Gift Annuity for 85% FMV and ACGA rate discount

- Charity agrees to pay fixed guaranteed annuity using 85% of the property appraisal
- Rate reduction by 0.5% to maximum of 7%
- Charity assumes market risk, market wait and expenses
- Donor benefits
  - controls timing of annuity closing
  - no closing costs
  - no commissions
  - no selling stress
  - lifetime income
    - Tax-free portion
  - Double deductions
    - Outright gift portion
    - Gift annuity deduction

Gift Annuity for 85% FMV and ACGA rate discount

- Gardner-Webb University, Boiling Springs, North Carolina
- Stephen, age 83
- Condo Unit, Waco, TX
- Appraisal $45,000, March, 2009
- Annuity $38,000, 6% (7.7%), quarterly
- Sold net $37,786, March, 2010
- Rady Children's Hospital, San Diego, California
- Walter and Maureen, ages 66,66, non-donors, internet search
- House, investment property, Columbia, SC
- Appraisals $995k, $925K, $900k
- Annuity $825k, 5.10%, (rate controlled), April, 2011
- Taxes $15,000
- Listed for sale

Gift Annuity for 85% FMV and ACGA rate discount

- FirstHealth of the Carolinas, Pinehurst, NC
- Robert 9-22-24 (80) and Jane 9-3-14 (90), $50 donors, attended seminar
- Ski Cottage, Stratton Mt., VT(1972) 1.2 acres, 3,300 sq. ft.
- Appraisal 2004 - $425,000
- Annuity for Robert (80), Sept., 2004 for 85% $361,250 @ 7.5% (8.0%)
- Sold $388,233 net (2005)
- Deductions $63,750 & $188,709
- GBMC, Baltimore, MD
- Martin 3-4-32 (71) and Dawn 11-27-32 (71)
- New Jersey vacation property, April 2003 gift
- Appraisal: $1,330,000, cost $50,000, fully depreciated, rented, depreciation recapture issues
- Buyer in the wings
- Strategy: Outright gift (2.75%), Sale (60%), CGA (37.25%) @ 6.2% two-life
- Deductions: $113,301 CGA, $36,480 outright

Deferred CGA 18 months

- Charity agrees to pay fixed guaranteed annuity using 80% - 85% of the property value
- Payments begin 18 months from closing or beyond

- Deferred payment increases payment
  - 0.10% increase for each 18 months
  - Crescendo has program to percentage of payment
- Deferred payment increases deduction
- Can defer payments beyond 18 months

Gift Annuity Give Up and Get

- Single life agreement dated December 17, 1997 funded with $50,000 cash
- Established by husband for his spouse, investment banker
- Nancy born 12/26/41 age at agreement 56
- Payment rate $4,000 or 8%
  - ACGA rate was 5.9%
- Donor designated as fund manager for annuity
- It is now 2010 and annuity has a current balance of $90,000
- Annuitant wants to withdraw $35,000 from annuity
- Give $55,000 to charity
- Present value of future interest $49,773
- Withdrawal is 70.319% of present value
- Tax-free withdrawal $16,278

Gift Annuity Give Up

- Washington State donor, dob 8/12/26 (84) contributes $100,000 cash to a Massachusetts charity on July 1, 2005 to establish an 8%, monthly payment CGA
  - ACGA rate was 7.8%
- Donor wants to give up annuity after receiving her July 31, 2010 payment
- What is her charitable deduction and taxability of payments to date?
- Deduction is difference between the original gift amount and the remainder interest of the charity which represents the present value of her remaining income interest
- Deduction $46,385.83
- 30% of AGI deduction
- Taxability of payments
  - Ordinary $1,577.55
  - Tax-free $3,089.35

Gifts of Mineral Interests

Handling Complex Gifts

A Professional Advisor's Perspective

Mark A. Vergenes, President & **Thomas W. Bergen, Esq.**

MIRUS FINANCIAL PARTNERS

HARTMAN UNDERHILL & BRUBAKER LLP ATTORNEYS AT LAW

Gifts of Mineral Interests

- New technology has made the Marcellus shale in the Northeast and Bakken shale in North Dakota/Montana very valuable mineral interests
- Many donors with New-Found wealth and may now have a greater interest in charitable giving

Gifts of Mineral Interests

But…

- How should they give?
- What are the rules?
- Should the gift be outright or in trust?
- Who is a qualified appraiser?

Gifts of Mineral Interests

Ownership….

§ The owner of a mineral interest has the right to exploit, mine and/or produce any or all of the mineral lying below the surface of the property

- Varying degrees of ownership makes gifts of oil/gas interests to charity complex

Gifts of Mineral Interests

Ownership….

- Some donors own land with oil/gas deposits
- Others own only the minerals, not the land

Gifts of Mineral Interests

- Both types of owners may lease their mineral interests to an energy company that will extract the minerals in exchange for royalty payments
- Oil/Gas interests are transferred to charity by deed or, in the case of a testamentary transfer, by will

Gifts of Mineral Interests

- If the donor owns the land w/ oil & gas under the surface…the donor cannot contribute less than the donor's entire interest.
- Contributions of partial interests in property are not deductible Section 170(f)(3)(A).

Gifts of Mineral Interests

- However, under an exception to the partial interest rule, a deduction is permitted for a gift of an undivided portion of a donor's entire interest in the property Section 170(f)(3)(B)(ii).
- The donor must gift the land together with the minerals (oil & gas) to permit a charitable deduction

Gifts of Mineral Interests

- The donor must own the interest for more than one (1) year to take deduction based on fair market value (FMV)
  - If the FMV interest is $500 or more, Form 8283 must be included with the donor's tax return to permit a charitable deduction.
  - If gift of interest is over $5,000 in value it will require a Qualified Appraisal, or the charitable deduction may be denied.

Gifts of Mineral Interests

- Land with mineral rights…
  - An outright gift to charity or to fund a life income arrangement, such as:
    - CRAT
    - CRUT
    - CGA

Gifts of Mineral Interests

- Donor owns only mineral interest…
  - The donor can gift the minerals alone to charity or to a CRT.
  - Because the donor is gifting the entire ownership interest, the partial interest rule is not implicated Section 170 (f)(3)(A).

Gifts of Mineral Interests

- Remember…
  - The deduction is based on FMV if the interest is held for more than 1 year.

  The rule of thumb in the oil/gas industry is that the value of a mineral interest = the annual income produced by the interest X4.

  Also, qualified appraisal will be required.

  * May be additional issues for life income gifts.

Gifts of Mineral Interests

- Donor leases mineral interest for royalties
  - Even if the donor has leased the mineral interest, they may assign the royalty stream to charity or fund a CRT.
    - There is no issue of income avoidance because a royalty is not earned.
    - Since the royalty payment is assigned, the donor avoids income tax on the payment.
    - "Fruit of the tree" analysis. Section 170(e)(1)

Gifts of Mineral Interests

- CRT or CGA Transfer Issues

If the leased interest is transferred to fund a life income plan, it is important to assess whether the royalty payment is sufficient to sustain the desired payout.

  - NIMCRUT or FLIP; because future income stream is uncertain.
  - CGA, which requires a fixed payment, may be a more difficult obligation.

Gifts of Mineral Interests

- Because royalties are considered passive income, the income is generally not subject to UBIT.
- IRS has held that income is not subject to UBIT as long as the royalty interest is not a "working interest" controlled by the charity.

(i.e. the charity is liable for operational expenses associated with developing minerals)

Gifts of Mineral Interests

- The donor could, of course receive the royalty payment, pay the taxes that are due then make a deductible of some or all cash to charity.
- Third option, donor transfers the lease to charity or a CRT. (established with a NIMCRUT or FLIP payout if the interest is held in trust)
- Investigate if "Wealth Replacement Strategies" are viable.

Gifts of Mineral Interests

- Gift Acceptance & Environmental Concerns.
  - Establish minimum gift values you are willing to accept.
  - Conduct environmental inspections.

Handling Complex Gifts, Real Estate, Mineral Rights and other assets

Questions?

Thank you for having us.