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The Relationship between Non-Cash Assets and Charitable Giving

By Susan Winer, Chief Operating Officer and Co-Founder of Strategic Philanthropy, Ltd.

The pandemic of 2020-2021 has had a significant impact on virtually everyone … individuals, families, businesses, and the nonprofit community each have "war stories" related to COVID-19.

Families and individuals are reevaluating how they view their wealth and are far more aware of their own mortality. Ask any trust and estates attorney, they will tell you they have never been busier as clients revisit estate plans or, in many instances, finally getting it done.

Even charitable giving has been impacted by the pandemic. Quarantine may actually have been a positive influence on philanthropy. Charitable giving was at an all-time high in 2020, up 5.1 over 2019 with a record $471.44 billion given away, according to Giving USA, and a not often discussed strategy for charitable giving has become a hot topic for both lifetime and legacy giving planning **using non-cash assets to fund charitable gifts**.

Non-cash assets are a particularly attractive option for charitably inclined high-net worth individuals who want to continue to be charitable during a period when prudent financial planning calls for cash preservation. Non-cash assets or alternative or complex assets, include real estate, restricted stock, art and collectables. Using these alternatives to cash offers donors creative options for fulfilling their philanthropic goals, maintaining liquidity, reaping tax benefits, and unloading the trappings of the previous decades' conspicuous consumption.

Historically, these non-cash assets may have been given directly as gifts to an institution or organization but with the pandemic many nonprofit organizations have had to reevaluate their very survival and reassess how to ensure their sustainability. Museums, universities, organizations both large and grassroots, are facing great difficulties. Many have had to close their doors or, at best, are now a shadow of their former self.

Organizations are only interested in assets that can be converted into cash very quickly, meaning that there are no management, environmental, or other complicated issues with which the organization will need to contend. For example, museums or other institutions do not want to spend precious resources maintaining an art collection; they would prefer the financial value contributed. A gift of land carries with it the burden of ongoing costs for maintenance and taxes. Unless the land gift includes the financial resources to cover these costs, the recipient organization may have inherited an additional financial burden that it simply cannot absorb.

These days, organizations need general operating support (which is financial) to keep the lights on, to fund initiatives, to continue to do the work they are committed to doing. While every gift is appreciated, what does an organization do with a piece of art?

When does it make sense to use non-cash assets in charitable giving?

It makes the most sense when a person is charitably inclined but does not have the liquidity to make gifts in a way that will achieve the kind of impact around the issue or issues they care most deeply about. Another reason to use assets such as art, securities, land, or intellectual property as an alternative to, or in addition to, traditional financial support of an organization or institution is that there are potential tax benefits; for example, reducing or avoiding capital gains taxes that may arise if the asset is sold, while simultaneously getting a charitable deduction.

When it comes to art or collectables, there are tangential benefits when a donor wants to use the art to fund a charitable gift. A client of ours had a piece of art she wanted to sell and wanted the proceeds from the sale to go to an organization she supported. In concert with her art advisor, we arranged for the piece to be auctioned and her charitable goals became the story behind the piece when it was included in the auction house's catalog and presentation. The piece sold for over the asking price in great part because bidders who wanted to support the organization saw this as one way to do so. Additionally, the organization reported new donors that could be directly traced back to the auction. This was a win-win for everyone involved.

What a donor should know about donating non-cash assets

- Donors need to make sure that the tax consequences of the donation are clear prior to going forward with it.

- Is the ownership of the asset clear and unencumbered? For example, if the gift is land it needs to be free and clear. If the donor wants the land to be used in a certain way, or has specific restrictions or expectations, this may cause problems for the recipient organization.

- Does the donor have full ownership? For example, partial interest in any intellectual property is non- deductible. In order for a donor to receive credit for the gift, they must donate their entire interest in the intellectual property.

- If the asset is a piece of art, is there documentation of provenance? This must accompany the art piece along with valuation.

- If the gift is licensing rights, the recipients must adhere to the licensing terms. This can place a burden on an organization not equipped to enforce the rights.

- If the gift is a copyright of a book, for example, the charity may get the royalties associated with the copyright. However, if the copyright is shared between the author and the publisher or other parties, there has to be agreement regarding the relinquishing of rights; and if the creator of the asset donates it directly, and has not sold the asset previously, then they can only get a deduction on the cost basis, not the market value of the asset since market value has not been determined. Valuation is based on market value of the same or similar item or replacement value or present value of revenue generated (royalties x length of patent or trademark rights).

- Donors should also consider the timing of the donation. If the asset has the potential to greatly appreciate in the future, it may make sense to hold off on making the donation immediately.

A final consideration: Gifting non-cash assets should be one of the discussion points in the estate planning process particularly if there is a desire to reduce potential tax to the corpus or if heirs are not interested in having the assets in question. That will help individuals and the family weather the uncertainties we face in the world.

About Strategic Philanthropy

Strategic Philanthropy is a global philanthropic advisory firm headquartered in Chicago and working solely with high net worth and ultra-high net worth donors. Since 2000, the firm has been at the forefront of helping individuals, families, closely-held and family-owned businesses plan, assess, and manage their charitable giving to ensure that they achieve measurable impact with their philanthropic investments.

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