Issues That Arise When Making Bequests to Charity

Estate planning is most often thought of in the context of passing wealth down to family and friends after one's death. However, many people also desire to make a lasting impact by leaving money to charity in their will or trust. Federal law also favors such bequests because they are tax deductible, provided the charity is federally tax-exempt. When making these bequests to charities, it is crucial to understand the potential issues that you may encounter.

What are Charitable Bequests?

There are a few ways that a person may leave property to a charity in their will or trust. One method is by specific bequest, which occurs when a testator describes a particular asset or dollar amount of money that should be given to a certain charity. Specific bequests are straightforward and defined, and thus rarely encounter problems with distribution. Another method is by residuary bequest, which gives the remainder of a testator's estate after paying debts, administration costs, funeral expenses, and distribution of specific bequests. Depending on the amount that comes out of the estate before the residuary bequest, this can be the largest or smallest disposition in the will. While this adds a degree of uncertainty to the amount given to charity, it is a good option for those unsure of the size of their eventual estate.

Lastly, a person can make a split-interest bequest, which is a bequest that is split up among a charity and other beneficiaries. For a split-interest bequest to qualify for the charitable deduction, the form of the bequest must be in strict compliance with the requirements of the IRS. The most common split-interest bequests are to charitable remainder trusts designed to pay income to a noncharitable beneficiary for a specified term. At the end of that period, the charity receives the remainder.

he trust can be set up as a charitable remainder annuity trust (CRAT) or a charitable remainder unitrust (CRUT).

Common Issues with Charitable Bequests

As previously mentioned, when someone passes away and leaves part of their estate to public, charitable, or religious organizations, including certain types of trusts and foundations they've set up, there's a tax benefit called a charitable deduction. This deduction helps reduce the estate's overall tax liability. The amount of this deduction is determined by the fair market value of the property or assets given to the charitable organization.

When lawyers or legal experts are drafting documents that involve charitable bequests, it's crucial to be cautious and avoid creating overly complex tax calculations that could make things more difficult to understand. The goal is to ensure the process remains straightforward and transparent for everyone involved.

Another important thing to consider is "default apportionment rules." These rules might make it so that a charitable organization must pay part of the estate's taxes. To prevent this, you can include

specific instructions in the will that clearly say the charity won't have to pay any of the estate taxes. This way, you ensure the charity gets the full benefit of the bequest without being burdened by any tax obligations.

There are additional challenges that can arise when a charity receives a bequest. Many charities have established policies to help guide how they handle bequests. Problems can crop up due to the nature of the bequest itself, potential disputes and legal battles that might force the charity to spend money on legal proceedings—resulting in delays in receiving distribution of the assets. So, it's important for both the donor and the charity to be clear about the terms and conditions of the bequest to avoid such issues and ensure a smooth process.

Remember, leaving a legacy to a charity is a powerful way to make a lasting impact on causes you care about deeply. Contact your CPM attorney or any member of our Family Wealth & Estate Planning Group to explore the possibilities of a meaningful charitable bequest to a charity in your will or trust.