Advanced Planning Strategies

By Scott E. Squillace

10 Tips to Motivate Clients to Incorporate Philanthropy into Their Estate Plans

The macroeconomic shift we've all been experiencing lately means many things to many people. For the estate planner, it means more nervous clients, among other things. Those clients who are already worried that they may not have "enough" for themselves and their loved ones certainly now increasingly feel that the massive decline in the value of their estates has left less available for charity. Why, then, would anyone consider philanthropy in this environment? We all know (and perhaps increasingly hear) that "charity begins at home."

Indeed, I often hear from peers in the planning community that they do not believe it is our "role" to raise the issue of philanthropy with our clients, if the clients themselves don't raise it. Well, we all also know what happens when we assume. This article will hopefully dispel that myth and provide the estate planner with some practical tips on how to motivate clients, even in this difficult economic climate, to incorporate philanthropic planning into their estate plan.

I opened a "boutique" estate planning law firm in Boston in May of 2008, right before the world changed. We, too, experienced significant delays and cancellations in client planning during late 2008 and early 2009, as clients were frozen about a variety of things financial. Indeed, clients were less inclined to embark on anything they viewed as discretionary spending, including estate planning. As corollaries to foundational estate planning, charitable giving generally—and philanthropic planning specifically—has been adversely affected by the recession.[1]

We've all heard about the high profile decline in fundraising. My personal favorite was the Robin Hood Gala (a terrific cause, no doubt) whose 2008 revenues from the hedge fund darlings declined precipitously to $56.5M (from $72M the year before).[2] A more

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relevant measure, however, might be the Salvation Army's report of a 20 percent decline in its holiday collections.[3] Whatever the metric, it's not good news for charities.

And, then there's the overlay with the current state of play with the Federal Estate Tax. There have been considerable studies over the years (and some debate) about whether and to what extent having an estate tax motivates charitable giving—at least at death. A 2003 report from the Urban Brookings Tax Policy concluded: "Estate tax repeal would have significant deleterious effects on charitable bequests and charitable giving during life. Although estate tax reform will raise many issues, the impact on the nonprofit sector should be a central part of the debate."[4]

Yet we know the likely leverage with philanthropic planning can be extraordinary and make meaningful differences to many. This very Journal has reported in the past on the power of these numbers:

- It is estimated that over the next 50 years, more than $41 trillion will be transferred from one generation to the next. A substantial percentage of that (estimated to be $6 trillion) will be donated to charity.
- The estate tax in the United States contributes to the high level of charitable giving through bequests. A 2004 government study concluded that if the federal estate tax were permanently repealed, overall charitable giving would be reduced by six to 12 percent. Charitable bequests could decline by 16 to 28 percent.[5]

As my friend here in Boston, Greg Englund, puts it in his terrific book for families called Beyond Death and Taxes, the choice is quite simple: either you can engage in voluntary philanthropy or involuntary philanthropy—the choice is yours.[6]

It has been encouraging, therefore, to participate with so many different clients in so many different forms of philanthropic planning. Indeed, since we opened our firm in 2008, 73 percent of our clients have done some form of philanthropic planning. We recently did a quick "back-of-the-envelope" calculation, and, if all of our clients' testamentary gifts were accelerated on April 1, 2010, we would have helped serve as a conduit for approximately $33,472,000 in charitable gifts from just under 100 clients. So, how did we do it? Well, frankly, we're not entirely sure. It could be that we attract clients who are, like us, charitably minded and predisposed to contribute philanthropically. Or, it could be our process. My suspicion is that it's some combination of the two.

In this column, I'd like to share with you "10 Tips" that I developed in reflecting on what we've been doing to help motivate clients to incorporate philanthropy into their plans. Hopefully some of you will find it helpful.

Tip 1: Ask about it. Don't be afraid to raise the subject. Often people are excited when you raise it. Sometimes they need to think about it some more. Other times there is interest, but a perspective that they don't have "enough to give" in order to do something in this area. If that's the case, see the other tips below.

Tip 2: Make it about them (not the charity)—current income tax savings can be compelling. Planned giving efforts by charities are often unsuccessful. That is because the charities make it about themselves: the very compelling value proposition they perceive they offer in terms of their mission and work. When it comes to philanthropic planning—at least to motivating clients to begin to do something—it needs to be about them. Techniques that can help with current income tax savings can be compelling. Talk in terms of those strategies (for example, Donor Advised Funds, certain split interest gifts or charitable gift annuities) and model out what's in it for the client now.

Tip 3: Introduce easy to understand concepts. For example, with high wage earners or people who enjoy large bonuses, discuss the "flex spending account" for charitable giving (DAF). A surprising number of very sophisticated clients are unfamiliar with the techniques and strategies that are available. My favorite one is the Donor Advised Fund that, once explained to a corporate executive client, was fed back to me as "sort of a flex spending account for charitable giving." Once she had the concept (and we know it's not exactly that) it was easy to understand and very desirable to fund in a year where she received a large bonus.

Tip 4: Take the obvious road blocks off the table. Of course there's not enough for your family/loved ones, but think about the one major liquidity event—maybe you could "sweep some off the top"? I like to ask clients to imagine a moment in time when everything they own—their home, their retirement and investment savings, essentially all of their belongings were converted to cash. First, what might that amount be? And, second, if that was the total "bucket" you were looking at (as opposed to your current checking account balance) might you then feel better about making some donation to your favorite charity or charities? People focus on their

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current liquidity needs and need to sometimes be reminded that at death, there could be significantly more liquidity.

Tip 5: How about getting Uncle Sam to "match" your gift? (X percent of IRA/401(K) assets has that effect). This is perhaps my favorite and often the simplest. It only suffices to model out the tax 'haircut' that retirement plan assets will take if distributed immediately upon death to suggest that even a small percentage of those assets destined for a charity will produce a healthy leverage effect.[7]

Tip 6: Try a formula approach. If the total value of my gross estate exceeds $3.5M, then five percent of everything above $3.5M to my DAF. Often clients are quite genuinely concerned about loved ones having enough. You can help with this issue by suggesting a formula for charitable giving. Would they, for example, be prepared to make a charitable gift if the total value of their estate exceeded some healthy base? And even then, limit the gift to a fixed amount or small percentage in excess of that base. This is often an easy way to have a placeholder in the plan for future discussions.

Tip 7: Help them understand what's in it for them. For example, another way to diversify retirement income streams is to set up a CRT for a steady income source (or a Charitable Gift Annuity). Split interest gifts are complex and not obvious—even to sophisticated clients. They are, however, an increasingly attractive way to diversify certain risks and accomplish tax planning. Model out one or two examples just to get the discussion started.

Tip 8: Look for the opportunities. Highly appreciated assets are ripe resources for these techniques to eliminate capital gains tax. Not that novel, and admittedly less frequently available in this economic climate, but appreciated assets still do exist and, again, are often overlooked by clients as a vehicle for charitable giving. Remind everyone what the capital gains tax is (and likely to become), in order to evaluate whether these assets or some small piece of them might be a good vehicle for this planning. Combine this with other strategies. For example, if someone has not yet identified a favorite charity or doesn't want all of his or her estate to support only one—set up the DAF to be the recipient of the appreciated asset and spray it out to deserving organizations from the DAF over time.

Tip 9: Remind small business owners to think about it before the exit strategy is put in place. Need I say more?

Tip 10: Ask about it. Simply don't be afraid to raise the issue and just listen. It's easier than you think!

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ENDNOTES

[1] 8th Annual Guidestar Report on charitable giving suggests a serious decline in charitable giving—down 51 percent in 2009 after a 35 percent decline in 2008, while at the same time charities are experiencing an increasing demand for their services. *See www2.guidestar.org/rxa/news/news-releases/2009/eighth-annual-guidestar-nonprofit-economic-survey.aspx.*

[2] Available online at *www.newsweek.com/id/141161*. The Robin Hood Gala has taken place since 1988 to raise money for poverty in New York City: They have, over the years, raised hundreds of millions of dollars. For more information, *see www.robinhood.org.*

[3] *Id.*

[4] Urban Brookings Tax Policy Center, July 2003, Jon M. Bakija and William G. Gale. *See www.urban.org/UploadedPDF/310810_TaxPolicy_6.pdf.* c.f. Paul G. Schervish and John J. Havens, *Extended Report of the Wealth with Responsibility Study*, Social Welfare Research Institute, Boston College (March 2001), 27. Absence of estate tax should cause more charitable giving to occur, based on surveyed results about respondent's intentions.

[5] Betsy Brill, *Preparing for the Intergenerational Transfer of Wealth: Opportunities and Strategies for Advisors*, JOURNAL OF PRACTICAL ESTATE PLANNING, April–May 2003.

[6] Gregory J. Englund, BEYOND DEATH AND TAXES (Book 1993), available online at *http://search.barnesandnoble.com/Beyond-Death-Taxes/Gregory-J-Englund/e/9780963640116.*

[7] *See, e.g.*, Natalie Choate, LIFE AND DEATH PLANNING FOR RETIREMENT BENEFITS (2006).

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