# PLANNING FOR THE SALE OF A BUSINESS OR PROPERTY

**THE PROBLEM:**

The sale of stock or assets in a highly appreciated business or property can result in a significant portion of the proceeds going to taxes when the stock or assets are sold. For most taxpayers that own an asset that has appreciated in value, the capital gain on the sale can mean 25% or more in taxes after the sale and close to 45% in states like California. If properly structured, there are some significant benefits for charitably minded families to mitigate the taxes they will pay now, and in the future, if they are willing to let charity compete for the government's share of the transaction. Philanthropic families utilizing this strategy take advantage of a tax-exempt environment of a charitable trust to:

1. Grow assets and get asset protection in a tax-exempt environment
2. Secure a long-term stream of income for retirement or other family needs
3. Defer or eliminate taxes at the sale of the assets
4. Get a more tax efficient way to make charitable gifts
5. Protect the asset and income stream from future liability
6. Create the ability to use the tax deduction against a higher percentage of AGI

**THE ULTIMATE CHARITABLE TRUST:**

The charitable remainder unitrust is a fairly common entity used for charitable planning, but it is also a highly regulated form by the IRS. This is a good thing, because there are few grey areas. With this structure you will want to use an experienced Trustee that knows what can and cannot be done with the trust and its assets so that you are not making new law with a creative use for the Trust. The Ultimate Charitable Trust can pay income to the Grantors, their children or their grandchildren. This is known as "spraying" and allows the income to be taxed to whoever receives it. This makes it a great technique for paying for children's or grandchildren's college expenses. In order for this ability to be available, the Trustee of the trust must be someone other than the Grantor or his immediate family. It can be beneficial for the family to work with a Foundation like Joy To The World Foundation that is an experienced Trustee that is very responsive the Grantor's desires. The Grantor can also release money from the Trust to charity early during the term of the trust, producing a current tax deduction in the year of the release for the Grantor. The goal is to create a trust with only a 10% current charitable value and a 90% income value, which is the lowest charitable value the IRS will allow. Assets held in the trust are outside of the Grantor's estate, are not subject to creditors and are not considered marital property if income is going to children providing a level of asset protection for the family.

**ADDITIONAL ADVANTAGES:**

**GRANTOR CONTROL**. The Grantors can be the Trustee or Co-Trustee of the Trust and maintain control over the assets of the Trust, before and after the sale of the property or business, and they can stay on to manage the investments. In order to avoid the capital gain on the sale of the property or business assets, the property or business interest must be contributed to charity before any sales documents are signed. If the anticipated sale does not go through or the property or business is not sold, the Grantors need to understand that the Trust now owns all or part of the business or property. The Trust does however, allow the Grantors to keep control as the Trustee and its assets even though the gift has been made to the Trust. Joy To The World Foundation can serve as Trustee or Administrator for the Trust and will manage the tax reporting, tax return, charitable deduction planning and charitable gift transfer for the Grantors.

**REDUCES THE DUE DILIGENCE TIME AND EXPENSE FOR THE GIFT.** Normally if a piece of real estate or a business interest is contributed to a charity, the charity must do an environmental study on the property and/or a due diligence review to determine if there are any potential liabilities to the charity from the property or business interest. Though usually an environmental study is not needed for the gift of a business interest or asset, the charity does need to make a thorough due diligence review of the business for liability issues as well before the business interest can be accepted. This process can be expensive and time consuming. If there is a potential buyer who is waiting to make an offer or if the Grantors want to make the gift before the end of the year for tax purposes, it can be a problem. Establishing the CRUT to receive the property or business interest can reduce or eliminate these concerns. The CRUT then as owner of the property or business interest sells the asset. Because the charity is the remainder beneficiary of the CRUT, it does not need to make a decision on acceptance of the assets until the termination of the trust and then all that will be left in the Trust should be cash.

**BETTER UTILIZATION OF THE CHARITABLE TAX DEDUCTION.**

When a piece of property or a business interest is contributed to charity, the Donors receive a current tax deduction for the full fair market value of the property gifted. If the property or business interest is appreciated property, then the tax deduction can be used against 30% of the Donors' adjusted gross income in any year. The tax deduction can be carried forward for five additional tax years. If the value of the gift is significant, this can sometimes produce a tax deduction that cannot be utilized in the time period allotted. Also the tax deduction occurs in the year of the gift, so if the property or business is not sold in that tax year, the donation year will not match the sales year. This is especially important if only a portion of the business or property is being contributed to charity. If the property or business is hard to value, the Qualified Appraisal which must be done for each gift of appreciated property, may not match the potential sales price if the sale does not occur in that year. This can be tricky because the Appraiser will have to potentially justify his appraisal to the IRS and there are penalties for over stated appraisals. These factors can make the appraisal very expensive because of the liability associated with it. When the LLC and CRUT are used, the Donors will receive a tax deduction in the year of the gift for a small portion of the value of the property and many people decide not

to even bother with the appraisal, since the greatest value for tax deductions will come after the asset is sold or become liquid. Since there is liability associated with the 8283 form that the appraiser needs to sign the cost can be higher and getting a timely appraisal at the end of the year can be difficult. If the taxpayer decides to use his basis as the value of the gift to the trust then another advantage is that the tax deduction of the proceeds after the sale from the trust to the charity will be against 50% of the AGI instead of 30%. Typically, with this type of arrangement, the tax deduction is about 10% of the value of the property. If the property or business sells in that tax year, the Donors can make an additional contribution of a portion of the sales proceeds from the trust to charity in the next year and get the other 90% of the deduction that they did not receive from initial funding of the trust. If they cannot utilize all of the tax deduction, even with the five year carry forward provision, they can keep the CRUT and make annual contributions out of the trust to their Foundation Donor Advised Fund account and receive a current tax deduction in the year of the contribution. Using this technique, the tax deductions can be pushed forward and utilized over a long period of time based on when the Donors need them the most. It may be more valuable to defer the tax deductions into later years so that they can be used only against ordinary income as opposed to capital gain income.

**DISTRIBUTION TO CHARITY OVER TIME.** Many times Donors will want to make distributions to charity over a period of time or make the distributions to a variety of charities. The Donor Advised Fund in a community foundation enables Donors to achieve these two objectives. If the Donors would like to maintain control over the investment of the assets over this time, the CRUT can allow them to do this as well. The Donors can continue as Trustees of the CRUT and invest the assets of the Trust. Each year the Donors can determine how much they want to give away and then make a gift to their Donor Advised Fund account by releasing principal from the Trust. They can then make the charitable distributions all at one time or over the course of the year from their Donor Advised Fund.