

INSPECTING THE MOUTH OF A GIFT HORSE: ACCEPTANCE OF UNUSUAL GIFTS

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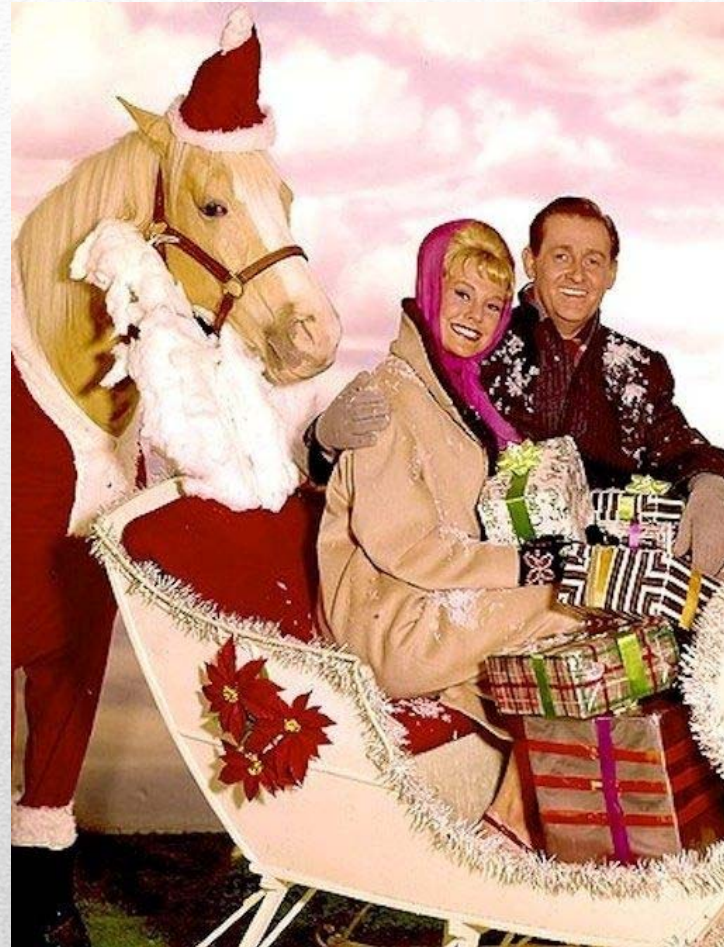


- Tangible Personal Property
- Real Estate and Mineral Interests
- Closely Held Business Interests

BIZARRE ASSET CLASSES



- Split Ownership
- Gift Acceptance Policy?
- Restricted Gifts
- Liability Concerns
 - Minerals
 - Real Estate
 - Business Interests - S Corp Stock
- Gift Acknowledgement



GIFT ACCEPTANCE CONCERNS





- Cost/Selling Price
- Sales of Comparable Properties
- Replacement Cost
- Expert Opinion
- Blockage/Market Absorption Discount

VALUATION



- Income from regularly carried on trade or business not substantially related to organization's exempt purposes
- Income from debt-financed property that not substantially related to organization's exempt purposes.
- Mineral interests
 - Operating Interests
 - Royalty Interests
- Partnership income
 - All activities flow through to charity and maintain tax character
- S Corp stock



UBIT CONCERNS





- State law fiduciary duties
- UPIA & UPMIFA
 - Prudent Investor Rule
 - Diversification
 - Delegate investment & management functions
- Donor Advised Funds

DUTIES OF PRUDENT INVESTMENT



- Partial Interest Rule
- Valuation & Substantiation of Hard to Value Assets
 - IRS is on watch for failure to comply with requirements
 - Non-cash over \$500 – qualified appraisal & Form 8283
 - Non-cash over \$5,000 – attach qualified appraisal & Form 8283
 - Vehicles over \$500 – Attach Copy B, Form 1098-C & Form 8283
 - Sale/Disposition within 3 years by Charity - Form 8282
 - Qualified Appraisal within 60 days of gift by qualified appraiser of type asset being valued – (i.e. minerals vs. art)

DONOR'S CONCERNS



- Income Tax Deductibility
 - Depends on type of gift & recipient
 - Art given to museum or other than museum
 - Artists and those gifted art are limited to deducting cost of materials used in creating the art
 - Mineral interests operator – limited to cost basis
 - AGI limits/carryover/order of subsequent years deduction & Pease limitation
 - Difference between grantor & non-grantor CLT
 - Deductibility when using CRT depends on:
 - type of charitable remainderman
 - the kind of property contributed to the CRT
 - whether, at the end of the term, the assets are distributed outright or held in trust for the charitable remainderman



DONOR'S CONCERNS



- Sell or Convert LP Interests or Corporate Interests in Closely Held Businesses
- Disclaimer
- Disregarded Single Member LLC – Liability Protection
- Move UBI Activities to Taxable Subsidiary (“C” Corp.)
- Donor Advised Fund
- Planned Giving Vehicles
 - LP
 - CLT
 - CRT
 - CGA
 - S-IDGT



STRATEGIES





- Rancher Joe - 3,000 acres of real estate
 - In his family for four generations
 - Recently, valuable oil and gas minerals were discovered below this land
 - Big Oil Co. has approached Rancher Joe to lease these minerals for a very enticing bonus payment and royalty interest
 - If (and when) he does sign the lease with Big Oil Co., Joe would like to give back to his community that has served him and his family so well over the years - a certain amount to charity

CASE STUDY: OIL/GAS



- Making the gift of interests outright:
 - Due to the partial interest rule, Joe would also have to give a proportionate % of the surface estate along with the same % of the mineral estate, i.e. 5% of minerals & 5% of surface, to charity
 - Would lose all control/rights/income to the interest given
 - It is Rancher Joe's obligation, as the donor, to comply with the IRS valuation and substantiation rules
 - If Rancher Joe's claimed deduction is estimated to be in excess of \$5,000, he must obtain a qualified appraisal by a qualified appraiser.
 - He must also complete Form 8283 and attach it and the qualified appraisal to his income tax return for the first year reporting the gift, and maintain adequate records regarding the property.
 - He will be responsible for procuring the signature of the charitable recipient on the Form 8283

OPTION 1



- Funding an FLP with interests & making gift of FLP units
 - Flow-through treatment for UBIT
 - Partial interest rule still applies – cannot sever the minerals from the surface for purposes of making the gift
 - Joe and his family lose benefits from but may retain control over the gifted FLP units if Joe/his family control GP

OPTION 2



- Funding a CLT with the FLP units
 - CLUT advantages over the CLAT
 - Joe's family can be the remainder beneficiary
 - Not losing control or ultimate benefit of the FLP units; transferring value/income stream to charity for term

OPTION 3

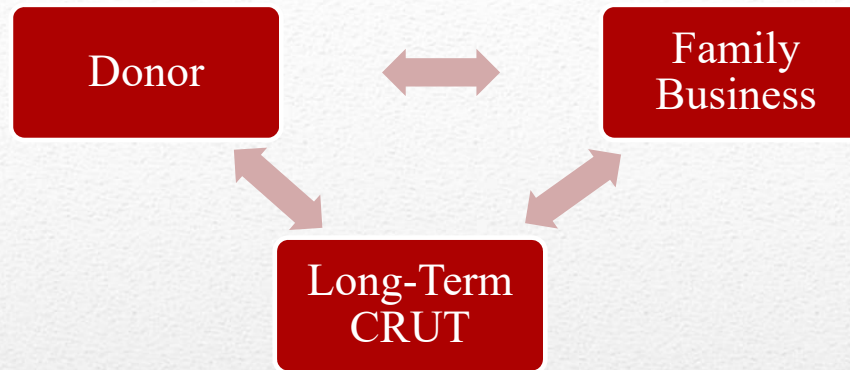




- Assign royalty income stream
- Gift cash proceeds
- Transfer the lease

MORE SIMPLE OPTIONS





1. Donor contributes stock to long-term CRUT
2. Donor receives income tax charitable deduction and gets a flow of assets during the CRUT term
3. Company can then redeem the stock, which will increase the minority owners' percentage ownership, giving the CRUT liquid assets.

CASE STUDY: FAMILY BUSINESS



QUESTIONS?

