



## DID YOU KNOW?

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### **Did you know that charitable gifts of S Corp stock have many traps for the unwary?**

A charitable gift of appreciated stock is an excellent tax planning technique because it produces two tax benefits for a donor – both (1) a current income tax deduction for the full value of the property and (2) avoids the donor being subject to capital gains tax on the appreciation of the stock when it is sold.

However, charitable intentions can be foiled if steps are not taken proactively to effectuate the donor's intent. As a threshold item, if a gift is contemplated in anticipation of a sale of the company, stock should be gifted prior to a letter of intent being signed. If not, the donor may be required to pay the capital gain tax while not having the proceeds of the sale to pay the tax with (based on the assignment of income theory).

As tax-exempt organizations, charities generally do not pay income tax on sales of stock or other assets. However, there is an exception to that general rule with respect to S Corporation stock – all income of the S Corporation attributable to a charity shareholder and all capital gain that a charity recognizes from the sale of appreciated S Corporation stock is automatically taxable as unrelated business income (UBI), resulting in the imposition of unrelated business income tax (UBIT), which is imposed at the applicable income tax rate. With advance planning, it is possible to structure these gifts to significantly reduce the UBIT in these situations.

Other considerations apply when a gift is not made in connection with an anticipated sale of the company. As noted above, S Corporation stock is not generally a good asset for a charitable organization to hold due to the continuing UBIT exposure. For gifts made to charitable organizations classified as private foundations (most family foundations, for example), care must be taken to ensure that an eligible buyer will exist (generally someone outside of the family or holders of concentrated positions of the company) for the gifted stock. Other private foundation rules may be implicated in these transactions as well.

**Bottom Line:** If a client plans to make charitable gifts of S Corporation stock, careful tax planning can prevent inadvertently converting a great tax benefit into a liability.

***“Be yourself” is about the worst advice you can give some people. –Thomas Lansing Masson***



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