

New Dimensions in Estate & Trust Planning

An Article to Benefit Clients & Friends

of

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Trust & Estate Planning ♦ Probate & Estate Administration ♦ Business Formation & Planning

THE PRIVATE FAMILY FOUNDATION

TOM AND ANN'S STORY

Tom and Ann, a couple in their early sixties, have been married over 30 years. They are still constant companions and very much in love. Having worked very hard throughout their professional careers, Tom and Ann are now retiring. They have accumulated wealth primarily through Tom's 401(k) plan, and Ann has had a knack for making prudent investments from her earnings, which have appreciated nicely over the years.

Tom and Ann are very close to their children and each child has obtained a professional education. Throughout their lifetime, they have given of their time, money and talent to their church, civic, social and charitable organizations. They have always endeavored (and encouraged their children) to give something back to society as a result of their accomplishments. In other words, Tom and Ann have strong charitable desires, but want to provide the family a method of

controlling both the disbursement of funds to charities and the charities' use of those funds.

After further discussions with Tom and Ann about their Estate Plan, they added these thoughts to their charitable desires:

- (1) to involve the children, and later the grandchildren, more directly in their charitable activities
- (2) to maintain a long-term family tradition that carries their name, wealth and legacy far into the future
- (3) to develop a systematic method of charitable giving, rather than writing a series of ad hoc checks each year to charities
- (4) to avoid unnecessary estate, gift and capital gains tax on their wealth transfers
- (5) to create a current income tax deduction for donations that would not otherwise be deductible

- (6) to provide an opportunity for their children to work with the younger generation in designing a program for meeting the family's charitable objectives and to pass along the family goals and values, and
- (7) As Tom said, "We want to make a little 'dent' in the universe."
- (8)

THE PRIVATE FAMILY FOUNDATION

Often in conferences with clients on Estate Planning matters, we hear the Tom and Ann story. We find that most clients don't know the full range of their charitable giving options. They believe that donations to public charities are their only choice. NOT TRUE! There are several other ways to effectively achieve charitable goals. With families like Tom and Ann's and single clients who want to ensure that ALL of their long and short-term charitable goals are realized, they find the PRIVATE FAMILY FOUNDATION as the charitable organization of choice. Foundations have a long and rich history. In one form or another, foundations existed in ancient Greece and Rome, Anglo-Saxon society, Renaissance Europe and England. In the U.S., foundations in their present form were primarily the product of our Industrial Society but now are a product of our high-tech world with its immense financial successes and wealth creation.

WHAT IS A PRIVATE FAMILY FOUNDATION?

Private Family Foundations are a "501(c)(3) charitable organization" created by a donor to carry out the donor's charitable activities. Federal Tax Laws define charitable activities **broadly**. Activities can include almost anything that is generally deemed to benefit humankind in a non-self-serving manner. They can range from supporting the donor's church, to educational pursuits on almost any matter, social or religious work,

scientific pursuits, support of amateur athletic activities, elder care programs, historic preservation initiatives, land and environmental conservancy and other activities that are doing 'good' deeds for society and are inherently charitable. Political causes are prohibited pursuits by a Foundation as they do not qualify as charitable.

HOW ARE THEY SET UP?

A **Private Family Foundation** may be structured to begin now, which is a Lifetime Private Foundation; or it may begin after death, a Testamentary Private Foundation. A Private Family Foundation is managed by a Board of Directors if it is a corporation or by the trustees if it is a trust. The directors or trustees can be paid reasonable compensation. Often, the directors or trustees are donor(s) and family members. The purpose of the Foundation, of course, is to maintain or aid charitable, educational, religious or other activities serving the public good. This is accomplished primarily by making grants by the Board of Directors to individuals, groups or other charitable organizations.

WHAT CAN'T THEY DO?

Private Family Foundations must be organized and operated under specific regulations laid out by IRS codes. They must be pre-approved by the IRS to gain Code Section 501(c)(3) charitable tax-exempt status and must file an annual information return with the IRS and state authorities. The Law sets forth special rules that, among other things, prohibit self-dealing activities between the Foundation and the donor. The Law also prohibits profit-making businesses within the Foundation and investments that would jeopardize the carrying out of any of its exempt purposes. Lastly, it requires a 5% payout each year of the Foundation portfolio income and principle, and each year the Foundation is subject to a 2% tax on net investment income.

WHAT ARE THE MAJOR ADVANTAGES OF A PRIVATE FAMILY FOUNDATION?

(1) Control. The donor (founder) may continue to control the distribution of the Foundation's assets in a manner consistent with the family's charitable goals. In addition, the Foundation document formulated by the Founder will serve his or her other intentions after death.

(2) Family Values Perpetuation. A Private Family Foundation created during life (inter vivos) or at death (testamentary) allows family members the experience of serving on the Board, focusing on administration and operation of the Foundation, along with discussions regarding grants to be made and reports from charities who have received grants. Our experience with clients (single or married) who have established Private Foundations is that it is an excellent way to unite family members in what they have not previously experienced—common family goals and purpose towards doing “good deeds.”

(3) Family Name Recognition. Most foundations carry the family name of the founder(s). Establishing a Foundation demonstrates to the community that the family is committed to charitable and social causes. With this recognition, the Family Foundation can influence the quality of life of its community through grant-making initiatives. In appreciation, the community will often invite the family board members to serve in other important positions in the community.

(4) Income Tax Deduction. When an individual creates and contributes to a Private Family Foundation during life, the donor is able to take an income tax deduction

immediately. For example, if you have highly-appreciated assets that you are holding to avoid steep capital gain taxes, the Private Foundation will avoid the capital gain tax AND allow the donor to get an immediate income tax deduction, usually 20% of adjusted gross income, plus a 5-year carry forward for any unused income tax deduction. Cash contributions receive a 30% income tax deduction, with 5-year carry forward, if needed.

(5) Estate Tax Benefits. Every dollar contributed during life or at death removes that dollar from the estate for Federal Estate Taxes. In other words, the family could save 55% on Estate Taxes with each contribution to the Private Family Foundation.

SUMMARY

Today, the “wealth transfer” of the older generation to the baby boomer generation is estimated to be 30 to 40 trillion dollars. Are members of this generation addressing the distribution of their estates effectively as a way to achieve their family **AND** charitable goals? Generally, No! That is the reason why our Law Firm proactively publishes books, writes articles, holds public educational conferences and teaches estate planning principles and strategies through public and private seminars. Many of our clients believe that the acquisition of wealth is a measure of one's hard earned successes and achievements and believe, as well, that wealth must be newly earned by each generation rather than inherited. As a result, many more of our clients have decided to balance family gifting with charitable gifting through a **Private Family Foundation**.

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