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Charitable Gifts of Tangible Personal Property: Two Case Studies

By Philip T. Temple, L.L.B. and Laurence C. Zale, MA

Collectors of tangible personal property are a peculiar lot; they often feel an emotional involvement with their collections. Occasionally, some view them as disposable assets like stocks, bonds and real estate. Others possess a split personality and consider them both.

Executive Summary

Individuals and families who want to make gifts of tangible personal property during their lifetime or at death face complex philanthropic issues. They include authentication, provenance, valuation and taxation. Therefore, they should work closely with independent professionals, including visual arts advisors, legal and tax counsel, and development persons at charitable organizations, to ensure the greatest giving and tax opportunities.

Tangible personal property is broadly defined in the tax code as any property, other than land or buildings, which can be seen or touched. Examples include artworks, antiques, jewelry, other collectibles, cars, boats and aircraft.

For outright gifts of property that are related to the purpose and function of the donee charity, the deduction is for fair market value, with a ceiling of 30% of the donor's adjusted gross income, with a five-year carryover for any excess contribution.

If the gift is not put to a related use, the deduction is based on cost with a ceiling of 50% of the donor's adjusted gross income, with a five-year carryover for any excess contribution.

Property can also be transferred through split-interest planned giving vehicles, such as charitable remainder trusts, where the donor usually retains some type of income stream for life and the charity receiving the trust assets when the trust terminates.

To that end, here are two real-life examples illustrating the philanthropic intent of a collector and a creator.

Collection to an Art Museum

An anonymous collector and art historian (who was a widower) amassed one of the finest private collections of baroque art in the U.S., with an estimated fair market value of more than $30 million. He had a strong desire to keep the collection intact while providing for his family and minimizing his tax obligations.

Challenge

The family was concerned that the potential estate tax consequences (approximately 50% of the fair market value) would require an auction sale of the collection because the art comprised the bulk of the estate.

Approach

The collection was transferred to a revocable trust which, at the collector's death, became irrevocable and its assets (the collection) were divided into two equal shares:

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1. The first share was placed into a net-income-with-makeup unitrust paying a unitrust amount of the lesser of (i) 5% of the fair market value of the trust assets, as revalued annually, or (ii) the actual unitrust income. Any deficiencies in distributions from an earlier year would be made up in any later year where the trust income exceeded the stated 5%. The trust term was 20 years; the beneficiary was the collector's daughter or, if she died during the 20-year trust term, her children. The trustees have the power to name the charitable remainder organization.
2. The second share was placed into a charitable lead annuity trust paying an annuity amount to charity equal to 8% of the initial fair market value of the assets placed in trust. The trust term was 20 years; the charitable beneficiaries were to be selected each year by the trustees; the trust remainder was payable to the collector's daughter or, if she was not then living, to her children.

The Benefits

1. The plan generated a substantial estate tax charitable deduction for the remainder and lead charitable interest.
2. The power to designate the charitable beneficiaries gave the trustees leverage to negotiate.
3. Significant income and future principal was generated for the daughter and her children.
4. The collection could be kept intact, if a museum purchaser could be found.

An art museum bought the entire collection, agreeing to maintain it substantially intact. Of the sales proceeds:

1. Twenty percent was used by the revocable trust to pay administration and other expenses, and to pay estate taxes.
2. Forty percent went to the unitrust.
3. Forty percent went to the charitable lead annuity trust.

Finally, the museum was designated as both a charitable remainder organization and annuity trust beneficiary. Since it received the remainder of the unitrust and the annuity amount stream from the lead trust, its cost of acquiring the collection was $10 million to $14 million, in present value terms.

Gifting a Television Film Archive to Four Museums; Selling the Balance

Morey Bunin was an early television puppeteer. He created various children programs that initially aired in 1944. William Saroyan, writing in 1949, believed that they were "without a doubt the best and most dramatic shows on television."

At his death in 1997, the Bunin family donated all of the puppets and memorabilia to the Museum of the Moving Image in Long Island City, New York. However, an extensive archive of the original 16-mm and 35-mm film, reappraised in December 2005 with a fair market value of $2.2 million, was still in the family's possession.

Challenge

The Bunin family wished to maintain the legacy of their father's programs, yet they wanted to gift most of the archive to museums that collect television film, while also exploring the commercial value of the shows themselves.

Approach

A comprehensive plan was created with their independent visual arts advisor, financial advisor and legal counsel to donate the shares for approximately $1.6 million of the archive as follows:

1. The Library of Congress ($450,000);
2. The Museum of Radio & Television ($450,000);
3. The Museum of Modern Art ($350,000);
4. The UCLA Film Archive ($350,000).

Of the archive, $900,000 was gifted to the Library of Congress and the Museum of Television & Radio in December 2005, and $700,000 of the archive was gifted to the Museum of Modern Art and the UCLA Film Archive in February 2006.

The balance of the archive, valued at $600,000, is available for sale to collectors and commercial entities.

The Benefits

1. The plan generated a full fair-market-value tax deduction of $900,000 for the Bunins in 2005, with a five-year carryover, and a full fair-market-value deduction of $700,000 for 2006, with a five-year carryover.
2. The Bunins avoided having to pay for another appraisal because the second gift was made within 60 days of the appraisal as required by Internal Revenue Service Regulations.
3. While the archive has been divided, the integrity of the shows has remained intact and they are available to a variety of viewers at four prestigious museums.
4. The part of the archive for sale now also has the pedigree of being in the permanent collections of those great institutions.

Conclusion

Tangible personal property is unique among assets. Its unlimited varieties, the way it's collected and the vital role it often plays in the lives of collectors requires the combined expertise of (1) an independent visual arts advisor, (2) legal and tax counsel and (3) qualified charitable organizations. Together, this constituency can advise collectors — large and small — of the opportunities to use their collections for personal or philanthropic purposes during their lifetimes and as part of their estates.

The case studies presented are intended to illustrate products and services available at Merrill Lynch. They do not necessarily represent the experiences of other clients.

Click here for more information on Philip Temple and Laurence Zale.