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Trends in Planned Giving: From the Perspective of a Charity's Board Members

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The current "trend in planned giving" . . . is current giving.

The "trend" in planned giving is that it never will be as popular in terms of the number of charitable gifts as current giving. Although it did not separately discuss planned gifts, two interesting statistics came out of the 2013 Fundraising Effectiveness Survey Report recently issued by the Association of Fundraising Professionals and The Urban Institute: every $100 gained in 2012 charitable gifts was offset by $96 in losses through gift attrition, and every 100 donors gained in 2012 was offset by 105 in lost donors through attrition.

Charitable giving always has been somewhat driven by the economy and the tax climate at the time of the gift. In 2013, here are the key factors in the tax climate:

- With the new 3.8% Medicare tax on net investment-type income that came in as part of the American Taxpayer Relief Act of 2012, charitable gifts of appreciated property may be gaining some traction in the current improved economy. A charitable gift of appreciated property will accomplish the gift and avoid both the new 3.8% tax and the maximum 20% capital gains tax on the appreciation.
- There is another movement in Congress to simplify the Internal Revenue Code and a few of the "sacred cows," such as the mortgage interest deduction and charitable contribution deduction, are being considered for either removal or reduction based on income. In fact, the "Pease" limitation on itemized deductions, including deductions for charitable contributions, was reinstated for those with incomes starting at $300,000 for joint returns (amount varies with filing status). The total amount of itemized deductions is reduced by 3% of the amount a taxpayer's adjusted gross income exceeds the threshold amount, the reduction not to exceed 80% of the otherwise allowable itemized deductions.
- There is a new 39.6% individual income tax bracket applicable at certain thresholds ($450,000 for joint filers).
- There is the usual periodic discussion in Congress about doing away with the federal estate tax – like Ohio, which no longer has an estate tax.

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IRS is getting tougher when basic charitable deduction rules are not being followed such as disallowing charitable deductions because the charity's gift acknowledgment letter did not indicate that "no goods or services were provided in return for the contribution," which is the case for most donors. There have been several recent cases in which this was the issue and the taxpayers lost.

What the charity's board needs to know about planned giving.

The common definition of "planned giving" is "deferred giving."

Common planned gifts are in the form of:

- A bequest in an individual's last will and testament
- A charitable gift annuity
- A charitable remainder annuity trust
- A charitable remainder unitrust
- A charitable lead annuity trust
- A pooled income fund
- A retained life estate

Bequests are the most popular form as 9 out of 10 planned gifts are bequests.

Why make a planned gift:

- To support the charity's mission
- Tax deduction
- The donor's financial situation favors gift over time rather than currently.

Considerations in selecting the form of the planned gift:

- Individual goals such as continuing a stream of income
- Ease of making the gift
- Timing of the gift

Assets that might be the subject of planned gifts:

- Securities
- Cash
- Life insurance
- Personal property such as artwork – to get the maximum deduction (i.e., 100% of fair market value) the charity would need to be able to use the property. For example, a gift of artwork to an art museum who would "use" it as part of its charitable purposes thus meeting the "related use" rule. If the gift is put to an unrelated use, the charitable deduction is limited to the donor's basis.
- Real estate
- Retirement plan – name charity as beneficiary of all or part of account

Concerns

- Tainted gifts: what if scandal attaches to the donor and the charity is unable to remove the donor's name from a "naming rights" gift such as a professorship? This happened to the University of Missouri at Columbia involving a gift by Kenneth Lay, former Enron CEO. Keep the money or refund it? The University, as has been the case of most charities faced with this problem, has chosen to keep the money and this professorship still exists.

- A few Ivy League schools are dealing with descendants of previous givers who are trying to enforce reversion clauses in cases in which they do not feel the school is following the terms or original intent of their relatives' gifts. Few older gifts are subject to reversion rights. Most courts have decided that being a descendent does not give the person "standing," that is any legal rights over his or her ancestor's gifts. Besides, most state attorney generals have legal rights to maintain actions against charitable organizations who are not following the terms of a gift.

- Sometimes the charity has to "look the gift horse in the mouth," meaning the board has to examine all aspects of a prospective gift, to protect itself from future problems. The cost of keeping a gift may be prohibitive such as the insurance premium on the artwork which produces no income.

Solutions

- Gift agreements – what if the pledge maker dies before completing his or her pledge – enforceable debt of his or her estate? In Ohio, probably yes regardless of the existence of a written agreement.

- Gift acceptance policies – to avoid accepting a gift that may hurt the charity. The charity needs to request cash along with the non-cash gift in order to cover additional costs arising from accepting the gifts such as its sale.

Conclusion

Some State University of New York studies suggest it costs $0.08 to $0.10 to secure $1 of planned giving. Charities need to invest some resources in planned giving, within reason, along with annual fundraising campaigns. The Report alluded to at the beginning of this article noted that "it usually costs less to retain and motivate an existing donor than to attract a new one, and so taking positive steps to reduce gift and donor losses is often the best strategy to increase net fundraising gains at the least cost."

For information regarding planned giving, please contact Louise A. Jackson or visit our web site www.eastmansmith.com.