Charity and Taxes Part 3

by Jerry Engel, C.P.A.

You can save more by making a charitable gift in one form than in another. Nothing complicated is involved—but many people overlook the tax-saving possibilities in charitable giving. This is the 1st of a series of Reports explaining the year-end moves to make for maximum overall tax saving. (Excerpts from Research Institute of America, Inc. Vol. II, No. 36)

Contributions exceeding 30% limit not penalized

An individual who wishes to, or must, make a substantial contribution in one year is not penalized if the amount runs over his 30% ceiling. Any excess over the amount deductible this year can be carried over and deducted in the next five years.

caution: The right to carry over excess individual contributions does not apply to contributions subject to the 20% ceiling, such as contributions to a private foundation exceeding 20%.

Spreading contributions can save taxes

The 5-year carryover allowed for contributions which exceed the 5% limitation for corporations or the 30% limitation for individuals generally eliminates or minimizes any worry about losing the benefit of a charitable contribution which exceeds the annual ceiling.

recommendation: Nevertheless, in many instances it may still be more profitable tax-wise for the contributor to find ways of actually spreading the contribution over a number of years instead of going over the ceiling in one year and relying on the carryover.

How to carve smaller gifts out of one large property

Here are some ways of dividing up a large property gift for purposes of spreading the portions as actual deductions over a number of years.

√ Make gifts of *fractional interests* in the property. Thus, if you want to spread a property contribution over two years, contribute a 50% interest this year and the remaining 50% interest next year.

√ Give a museum a one-fourth interest in an art object plus the right of possession for one-fourth or some other specified portion of the year.

√ Have the property made subject to a mortgage or other liability to a third party, then contribute the entire property subject to the mortgage. For example, if you want to contribute a $20,000 piece of property and spread your deduction over two years, borrow $10,000 on a mortgage on the property. Then contribute the property subject to the mortgage. You treat this as a contribution of $10,000 ($20,000 less $10,000 mortgage).

Next year you can contribute $10,000 in cash to the charity to pay off the mortgage.

If the liability exceeds the basis of the property, the donor has a capital gain measured by the excess (assuming the property was a capital asset in his hands). For example, a person paid $5,000 for stock now worth $10,000. He borrows $8,000 on the stock and donates it, subject to the debt, to a charitable, religious, etc., organization. He has a $2,000 charitable deduction and realizes a taxable capital gain of $3,000 ($8,000 less $5,000).

If the liability is less than the donor's cost, he can't deduct a loss because the transaction wasn't entered into for profit.

√ Transfer the property, taking back a mortgage from the charity to yourself. Your initial contribution is the excess of the value of the property over the mortgage. In later years you take a charitable contribution deduction in each year for the part of the mortgage you cancel.

caution: In a gift tax case, the Treasury has attacked this method on the theory that the donor never intended to enforce the liens. But the Tax Court upheld this method of spreading gifts, largely because the donor retained a lien on the property for the balance of the mortgage.

(Next week --"CONTRIBUTING PROFIT ONLY")