Tax Planning and Charitable Giving:
Aligning Donor Thinking and Nonprofit Strategy at 2012 Comes to an End

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With barely five weeks remaining in the calendar 2012 year, we focus on a truly daunting scenario for charitable gift planning: the possible expiration of the Bush-era tax cuts coupled with other potential changes to the U.S. tax code. The implication of these developments for year-end charitable gift planning by donors and last-minute strategies for the Jewish community's nonprofits seems to be up for debate. What is certain is that the rules are changing, and although we are not sure what the playing field will look like next year, high net worth donors are confronting difficult tax planning and charitable giving decisions right now.

Recognizing that the final outcome of deliberations taking place in Washington will undoubtedly impact nearly all taxpayers earning at least $75,000 annually (and not just those in the top 1% of income earners), we issue a "call to action" for Jewish organizations to consider immediate strategies to respond to proposed tax code changes and pre-empt donor motivations in order to best allow for fundraising successes in the last 30-35 days of 2012.

An overview of the possible tax law changes includes the expiration of the income, qualified dividends, and capital gains tax cuts enacted in the early 2000s, along with the sunset of estate, gift, and generation-skipping transfer taxes and tax rates. **According to the Tax Policy Center, nearly 90% of U.S. households may need to pay an average of $3,500 in increased taxes next year, with high-income households impacted the hardest.**

So what's a donor to do? Should donors think about giving more this year and reap the certain short term benefits, or wait to see what benefits might come in 2013? Another critical, strategic question: how should nonprofit organizations position themselves in these final weeks of 2012 in order to benefit from the possibility that high net worth individuals, their major donors, will be taking advantage of taxable gift exemptions and lower tax rates in the final days of 2012? Conversely, if the tax rates are increased in 2013 and beyond, will the possible decrease of high net worth individuals' income devoted to philanthropy adversely affect charitable giving in the U.S.?

The last time we saw major changes to the U.S. tax code that had a significant impact on charitable giving was in 1986 when a flurry of charitable giving occurred at year-end due to the announced changes. The following year, there was a precipitous drop in charitable giving, though giving re-adjusted in subsequent years. Will the same hold true for the end of 2012 and into 2013? We talked recently with three prominent estate planning legal experts to determine what their clients are asking and what advice they are receiving from legal experts.

Jerald B. Lurie, business section chair at Adelberg, Rudow, Dorf & Hendler in Baltimore, Maryland, thinks a decline in charitable giving is possible in 2013 if there are major changes to the tax code. He acknowledges serious concerns about higher tax rates and how an increase would be less tax advantageous for his high income clients who make charitable gifts. To Lurie and his clients, much uncertainty exists and many potential donors are "sitting on the sidelines and waiting to see what happens." He points out that anyone who has considered a major gift to charity in 2012 should probably go ahead and make the gift this year.

"A donor's charitable inclination is the main reason for gifting, although it never hurts to also have a tax benefit available," he told us. "I just fear that the wealthiest of our population will feel less secure with higher taxes and reduced deductions.

As 2012 comes to a close, Lurie, who also serves as the president of his prominent Reform congregation Temple Oheb Shalom, offers up the following advice to charitable organizations: charities should be "pressing a good and affirmative case as to why donors should be donating." **It is imperative, he says, that charities *not* tie this appeal to potential impending tax issues, but rather to the compelling mission and immediate needs of the nonprofit organizations they support.**

Most donors still give because of the good work a charity undertakes, rather than being motivated by related tax incentives. Although Lurie also advises that nonprofits keep with the conventional wisdom and look for gifts this year, "it is difficult to predict what next year's gifts will look like."

Avi Z. Kestenbaum, Partner and Co-Chair of the trust and estates department at Meltzer, Lippe, Goldstein and Breitstone, with offices both on Long Island and in New York City and Special Professor of Law at the Maurice A. Deane School of Law at Hofstra University, is advising his high net worth clients to act quickly in order to take advantage of the certainties in today's tax climate. His concerned clients are "waking up" and he asserts that "the tax laws are not getting any better," which also raises concerns for charities. Kestenbaum noted that income tax laws will undoubtedly change, and affluent individuals and households will probably pay more in taxes and devote less to charitable causes. Plus, there is discussion on all sides of the debate about limiting the charitable contribution deduction, a major concern for charities.

An advisor primarily to high net worth individuals, Kestenbaum is keyed into the mindset of large donors, and, therefore, has a keen perspective on how charitable organizations should proactively approach donors at year-end. He stresses that charities should:

1. Showcase the urgency of contributions and let their donor base know that they are in need;
2. Provide advice on planned giving and legacy options to their donors;
3. Tell donors to "remember us" as they are planning year-end charitable contributions; and
4. Get commitments from donors *now*, especially as next year may be a challenge due to tougher tax laws and donors might be less likely to be in a giving mood.

Another advisor to high net worth individuals, Paul M. Roy, Of Counsel with Withers Bergman in New Haven, Connecticut, is also advising his clients to make charitable gifts this year rather than waiting and having to navigate an uncertain tax code. This year, he has seen charitable giving equal to, if not somewhat greater than, prior years, with many of his clients taking advantage of the certainty in today's tax environment. For example, charitable lead trusts have been a popular giving vehicle for his clients due to historically low interest rates.

Importantly, he sees that certain clients are as equally inspired to give because of a charity's compelling case as they are interested in receiving a charitable deduction. "People who are able and inclined to give like the fact that the government will supplement what they do," he notes, referring to current charitable deduction benefits enjoyed by donors when they support a nonprofit organization.

His advice to nonprofits mirrors the points from both Lurie and Kestenbaum and he adds:

1. Secure gifts *today* in whatever form those gifts may take;
2. Capitalize on low interest rates by working with donors to consider charitable lead trusts and remainder interest real estate gifts; and

3. Create strong, easy-to-understand and detailed planned giving materials and distribute them immediately.

Gazing into the proverbial crystal ball, Roy sees a tax code compromise in Congress and charitable deductions still in existence but in a more limited form.

Probably the most often-cited option in the "alphabetic soup" of special options for wealthy donors is the charitable lead trust (CLT), due primarily to historically low interest rates. Kestenbaum emphasized that "I'm touting CLTs to my clients both during life and in wills. During life because of historic rates and in wills for this reason and also to zero-out future estate taxes. This combines philanthropy, reduces taxes, and includes loved ones."

Therefore, we, at EHL Consulting, encourage all nonprofits to reach out immediately to their best donors and to engage them in discussions about year-end gift-giving strategies. Recognize that most sophisticated lead and major donors have reviewed their personal situations with their tax and money experts and they have developed special strategies for 2012 and, possibly, for 2013.

Before the calendar closes on 2012, we ask you to please share your strategies with us so that we can share those ideas with others and feel free, too, to discuss ways to maximize philanthropic support in the coming weeks.

Robert I. Evans, Managing Director, and Avrum D. Lapin, Director, are principals of The EHL Consulting Group, a major resource for fundraising counsel located in suburban Philadelphia. They are frequent contributors to eJewishphilanthropy.com. Benjamin Ginsberg serves as the firm's in-house planned giving specialist. The EHL Consulting Group is one of only 38 member firms of The Giving Institute. EHL Consulting works with dozens of nonprofits on fundraising, strategic planning, and nonprofit business practices and strategies. Learn more at http://www.ehlconsulting.com/.

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