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DEFERRED GIVING OF REAL ESTATE

By

ALAN R. CERF

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DEFERRED GIVING OF REAL ESTATE

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Working Paper
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ABSTRACT

Deferred Giving of Real Estate

Gifts of appreciated real estate to educational or charitable organizations provide tax benefits as well as psychological benefits of contributing to a worthwhile cause. Readers are introduced to the various alternatives for receiving a flow of income during lifetime in a deferred giving program. Income and estate tax considerations that influence deferred giving are explained.

A donor may desire to have lifetime income and at the same time make a gift to his or her favorite charitable organization. This may be accomplished through a charitable remainder trust. An immediate gift of the remainder interest is made to the charitable organization. The donor retains an income interest for life. A value for each can be determined through the use of Treasury Department tables. An income tax deduction is received in the year of the gift for the present value of the remainder interest.

Appreciated real estate is superior to cash as a gift because the tax deduction is based on the fair market value of the donated property. The appreciation element escapes income tax since the property is sold by the trust which is tax exempt rather than by the donor who would have capital gain on sale of the property. The property also escapes estate tax if the donor or donor's spouse is the income beneficiary.

Charitable remainder trusts must be properly structured to achieve tax benefits. The three approved types are: (1) charitable unitrust, (2) charitable annuity trust, and (3) pooled income funds. A unitrust provides an annual benefit of a fixed percentage of net asset value each year. An annuity trust provides an annual benefit of a fixed dollar amount. Most charities employ the unitrust for gifts of real estate. In situations where the yield on real estate is low the annual return may increase when the proceeds of the real estate are invested in securities by the trust.

DEFERRED GIVING OF REAL ESTATE

Introduction

Gifts of appreciated real estate to public charities provide taxation benefits as well as psychological benefits of helping a good cause. Both estate tax deductions and income tax deductions for contributions of property provide incentives for giving. The ability to avoid the tax on appreciation of property through charitable gifts makes contributions of long term capital gain property superior to cash contributions. Real estate held over a year qualifies as long term capital gain property.

Deferred Giving. A donor may desire to have lifetime income and at the same time make a gift to a favorite charitable organization. This can be accomplished by making an immediate gift of the remainder interest in the real estate to the charitable organization. The donor retains an income interest for life. The result is that the donor has created a life estate and a remainder interest. A value for each can be determined by the use of tables provided in the Treasury Regulations for valuing life estates and remainder interests.

Reasons for considering deferred giving. The paramount reason for giving is the desire to benefit a worthwhile charitable cause. Many individuals desire to share part of the fruits of their success with a charity of their choice. Deferred giving allows the satisfaction of making a gift during lifetime rather than at death.

Deferred giving provides an answer to a dilemma which many potential donors face. Because of uncertainties it is always possible that the donor may need the income from the property for health or other reasons. Through deferred giving a stream of income is provided during the donor's lifetime or the lifetime of donor and spouse. The charity receives the remainder interest on the death of the donor or alternatively at the death of the donor's spouse.

Tax incentives minimize cost of giving. There are both income and estate tax advantages

of charitable contributions of appreciated real estate. It is important to structure the gift properly so as to achieve the maximum advantages. Rules of taxation are often complex and care must be taken to carefully follow the rules. Professional advice is important.

Minimizing income taxes and estate taxes is a legitimate part of personal and financial planning. Needless to say income tax rates and estate tax rates are material. Charitable gifts of long term capital gain property to public charities are deductible at their full fair market value for regular tax purposes. This allows the avoidance of income tax on the appreciation element. The unrealized appreciation is treated as a tax preference for the alternative minimum tax. Thus taxpayers who must pay the alternative minimum tax receive a smaller benefit than those who are in a regular tax status.

Objective

The objective of this paper is to provide information to those who might be contemplating a gift of real estate to a public charity. The potential donor faces a number of questions such as the following: Why is it desirable to give real estate rather than cash or securities? Should the gift be made now or at death? Should the gift be made as an outright gift or should it be accomplished through deferred giving?

Readers will be introduced to the various alternatives for receiving a flow of income during lifetime in a deferred giving program. Income and estate tax considerations that influence deferred giving will be explained.

When to give? Should a donor with appreciated real estate give the real estate now or through his or her will? The answer depends on a variety of factors. What are the donor's current needs for income? What are the donor's likely future needs for income? Are heirs provided for adequately if the real estate is removed from the donor's assets? What is the potential

cost of the gift giving consideration to income tax and estate tax rates? Potential donors should determine how a deferred gift of real estate complements their personal financial and estate planning.

What to give? Should a donor give cash, securities, or real estate? Should property be sold and the proceeds given to charity? A donor generally should make a gift of appreciated property rather than the proceeds from its sale. This is because a capital gains tax would be paid by the donor on the sale of property. This tax is generally avoided if the property is given to a public charity.

If a taxpayer has both cash and appreciated real estate to give, what should be given? Generally appreciated real estate is a better gift than cash from the standpoint of tax considerations. This is because capital gains tax on the appreciation is avoided.

Whether appreciated securities or appreciated real estate should be given is a portfolio decision for the donor. It is partially a function of their anticipated relative appreciation and how the removal of one or the other would impact the total portfolio of assets.

Deferred Giving Alternatives

A donor creates a life estate and a remainder interest in a deferred gift of real estate. To obtain a charitable deduction for income and estate tax purposes three types of trusts qualify. The three types of qualifying trusts are: (1) charitable remainder unitrust; (2) charitable remainder annuity trust and (3) a pooled income fund.

Charitable remainder unitrust. A charitable remainder unitrust provides an attractive opportunity for a potential donor with appreciated real estate to benefit their favorite charity. The appreciated real estate is transferred to a charitable remainder unitrust. The trustee sells the real estate and places the proceeds in investments. If the donor had sold the property and given

the proceeds to the trust he would have to pay capital gains tax of 28% on the sale. Since the trust is tax exempt it does not pay any capital gains tax on the sale of the investment. The annual payments from a unitrust are based on the trust's investment performance and can therefore fluctuate.

The unitrust pays the donor and/or another beneficiary an agreed upon percentage of its net asset value each year. The percentage must be at least five percent, but can be more depending on the donor's objective and the results of the trust's investment. The amount received each year reflects any increase (or decrease) in the value of the trust's assets. If the trust income is greater than the stated percentage, the excess is added to the assets of the unitrust and reinvested for the donor's benefit.

When the unitrust is established the donor has the option to choose to receive the stated percentage each year even if the unitrust income is less than the stated percentage. The difference is made up by capital gain or principal.

An alternative is to choose to have the unitrust pay all of its income up to the stated percentage. If the trust does not earn the stated percentage in any year, the trustee pays only what the trust actually earns, without invading principal. It is also possible to choose to have the trustee make up any shortfall from prior years out of the excess income earned above the stated percentage in a later year.

The unitrust payment can last for the lifetime of the beneficiary or for any period of time up to 20 years. It is possible to designate more than one beneficiary.

Example. Clark and Marilyn Bearbacker are both age 50. They own a parcel of real estate which has a tax basis of $20,000 and has appreciated to $100,000. The property yields two percent a year.

Clark and Marilyn transfer the real estate to a charitable remainder unitrust for the benefit of the University of California. The trustee sells the real estate and invests the proceeds.

Clark and Marilyn are currently in a 31% federal income tax bracket. Income yield to the Bearbackers is 5 percent and U.C. calculates a 5 percent annual capital appreciation.

The Bearbackers look forward to a steadily increasing annual yield beginning with $5,000 in the first year and increasing to $12,033 in year 10, $19,601 in year 20 and $31,917 in year 30.

The original gift of $100,000 yields an immediate tax deduction of $20,693 which translates into current tax savings of $6,415. Thus the net cost of the gift is $93,585. Over the 39 year period the Bearbackers receive $570,475. Assuming a 31 percent tax bracket the after tax benefit is $393,628. There is a total benefit to the University of $670,475. These numbers are the result of the assumptions that income is assumed to increase by 5 percent per year and the principal is also assumed to increase 5 percent per year.

What have the Bearbackers given up by making the gift? Assuming they could also enjoy a 5 percent annual appreciation they would have $670,475 at the end of 30 years. The property could be willed to the University and it would qualify for an estate tax deduction so no estate tax would be paid.

Given up is the difference in income that would be earned on the property if they kept it less the income they get from the unitrust minus the tax on the difference. The annual payment is taxable each year as ordinary income. The potential donor must project how much could be earned on the property if it was not given to the charity.

The Bearbackers also give up the safety net that owning the property provides if there should be a financial emergency. They would of course still have the annual income from the unitrust.

Also given up is the opportunity of giving the property to their heirs. This possible problem can be avoided by setting up an irrevocable life insurance trust for the benefit of the heirs.

The trust is funded by using the excess income from the annual payment over the amount the property was earning previously. Insurance proceeds will be excluded from the estate because the trust is irrevocable. Gift tax can be avoided by allowing the heirs to have the right to demand the money.

Charitable Remainder Annuity Trust. An alternative to the unitrust is the annuity trust. An annuity trust provides a fixed yearly annual payment. This is contrasted to the unitrust in which the annual payment is a function of the value of the trust's assets.

The unitrust provides a fluctuating stream of income. If the value of the assets appreciate the annual income stream appreciates. This is advantageous if inflation is projected. If the assets appreciate in line with inflation than the income should increase proportionally. The income of the annuity trust does not fluctuate.

Example. Jimmi Chan, age 60, transfers $300,000 worth of appreciated property to fund an annuity trust with the remainder interest to the American Cancer Society.

The charitable deduction is a function of the amount of income that is retained. The larger the income selected the smaller the tax deduction that can be claimed. That is because the larger the income the smaller is the remainder interest to the charity. The charitable deduction is the present value of the remainder interest as determined by Treasury Department tables.

If the Mr.Chan elects to receive $27,000 a year for life, he would have a charitable deduction of $91,473. Once an election is made for annual income Mr. Chan will receive that amount for life regardless of the investment performance of the trust. The annuity can cover the life of the donor and his or her spouse.After the death of the first spouse, the surviving spouse

will continue to receive the full annuity. Upon the death of the surviving spouse, the trust will dissolve and its assets will be distributed to the American Cancer Society.

Pooled Income Fund. A third alternative is to contribute property to a pooled income fund. A large pooled income fund provides the opportunity for greater diversification of investments than the unitrust or the annuity trust. Unfortunately real estate is not usually appropriate for a pooled income fund as is explained below.

Gifts from many donors are combined for investment purposes. Each donor is allocated a certain number of shares of "units" in the Fund based on the value of the donor's investment in the Fund. Each income beneficiary receives a proportionate share of the net income earned by the Fund.

Upon the death of the income beneficiary of the Pooled Income Fund the portion of the Fund representing the current value of the assigned units is taken out of the trust and transferred to the charity. Exhibit I summarizes some of the essential characteristics of the annuity trust and the unitrust.

EXHIBIT I

COMPARISON OF ANNUITY TRUST AND UNITRUST

	Annuity Trust	Unitrust
Annual Income Benefit	Fixed dollar amount	Fixed percentage of net asset value
Advantages	Steady annual amount	Hedge against inflation
Gift is Irrevocable	Yes	Yes
Deduction based on fair market value	Yes	Yes
Basis for income tax deduction	Remainder interest deductible; IRS tax deduction tables based on ages, fair market value of gift, IRS specified rate of return	
Tax treatment of annual benefit	Ordinary income and/or capital gain. No tax if return of principal.	
Source of benefits	Trust income, capital gains, than principal as necessary to meet income commitment.	

Real estate donations are most suitable for a unitrust. In most cases charitable organizations will place real estate in a trust and the trust will sell the real estate. The unitrust is preferable for real estate over the annuity trust or the pooled income fund because of the illiquid nature of real estate.

Recall an annuity trust provides for a fixed income stream to the beneficiary. A problem arises if for example there is difficulty in selling the property. In this situation the charitable organization would have the problem of providing an income stream to the beneficiary without the source of income to make the payments. A problem also arises if the property is sold for substantially less than the fair market value used for determining the annuity.

Example. John Speck donates a condominium to the American Cancer Society. The fair market value is $200,000 as determined by appraisal and a life time annuity is based on that amount. The annuity trust begins quarterly payments to Mr. Speck based on that value. However there is a decline in the real estate market and the annuity trust is unable to sell the property. The result is they finally sell it for $150,000. The problem then is that the annuity trust is making payments based on the $200,000 value and it only has $150,000 to fund these payments.

In the case of a pooled income fund the illiquidity of real estate is again a problem. This is because the donor will receive a fractional interest in the pooled income fund. If there is a problem with selling the real estate the other participants in the pooled income fund could lose because of the decline in income.

Donation of home and still live in it. Some donors might desire to deed their home to a charitable organization and still have the right to live in it for the rest of their life. Since there is no source of an income stream from the property the unitrust, annuity trust, or pooled income fund are not suitable for this purpose. It is possible however for the donor to give the property and have a retained life estate. The donor does not get income during life but has the right to live in the property. An income tax deduction is available based on the remainder interest. Also the property does not result in estate tax because the estate charitable deduction comes into play.

Some charities use gift annuities in this case. The charity uses other available funds to purchase an annuity which is based on the remainder interest. The donor then receives a lifetime income stream and also an income tax deduction based on the gift of the remainder interest plus the value of the property in excess of the value of the annuity.

Real estate with a mortgage. Many charitable organizations will not accept donations of real estate with a mortgage because of a private letter ruling of the IRS(90-15049). If the donor remains legally responsible for the mortgage than the property does not qualify under the tax rules for a charitable remainder trust. If the mortgage goes into the trust the trust is responsible and then the trust is considered to have debt financed income. This results in unrelated business income which in turn means the trust may lose its tax exempt status. The result is that the trust would have to pay capital gains tax on the sale of the property.

Determination of percentage to be paid to donor. Charitable organizations have guidelines for the percentage of value of property to be paid to a donor in a unitrust. These percentages are based on the age of the donor. This is because the mix of stocks and bonds purchased with the proceeds will vary according to the life expectancy of the donors. The rate for a 50 year old donor will be in the 5% range. A 60 year donor will use a 6% rate and a 70 year old donor a 7% range. The rates will not exceed the rate on long term U.S. Treasury obligations.

Proceeds from donors will be invested to provide the stated return. For older donors the mix will be in favor of higher yielding instruments. More stock investments will be employed for younger donors.

Tax Considerations

Gifts to qualified organizations have implications for income tax, gift tax, and estate tax. The Internal Revenue Code describes the characteristics of qualifying donees in Section 170(c). Most of the organizations that meet these requirements are engaged in charitable, religious and educational activities. Examples are the University of California, the American Cancer Society and the United Way.

Overall 50% limitation. There is an annual overall limit for individual taxpayers of 50% of adjusted gross income. This maximum limit is imposed on donations of cash and property which would yield ordinary income on sale or exchange.

Limit of 30%. Property which would yield long term capital gain on sale or exchange produces a deduction which is limited to 30% of the taxpayer's adjusted gross income. However the long term capital gain property can be deducted at its fair market value.

Example. Joe Graziano has a parcel of real estate that was purchased ten years ago. The adjusted basis of the parcel is $5,000 and it has a fair market value at date of gift of $15,000. Mr. Graziano's adjusted gross income is $60,000. He can claim a charitable deduction of the $15,000 equal to the current fair market value. This is because it is below the limit of $20,000 ($60,000 * 30%). If the fair market value of the parcel was $25,000, his current deduction would be limited to $20,000 and there would be a carry-over of $5,000.

Carry-over. The amount of the charitable contribution which exceeds the limitation amounts can be carried over for five years. The carry-over contributions will be subject to the same percentage limitations that were applicable in the year the deduction was made. If long term capital gain property was deducted using the 30% limitation, the charitable deduction in following years resulting from that contribution will also be limited to 30% of the taxpayer's adjusted gross income.

Alternative Rule. The 30% limitation on charitable deductions for long term capital gain property may be avoided by reducing the deduction claimed by the amount of unrealized appreciation. This might be done so that the deduction would fall under the 50% of adjusted gross income limitation. This rule is for regular tax purposes.

This alternative is not frequently advantageous because the deduction based on the unrealized appreciation is foregone. If the difference between the property's fair market value and the adjusted basis is small, it may be advantageous to take advantage of this alternative rule and deduct an amount up to the overall 50% limit of adjusted gross income. Other factors to consider are (1)the present value of the difference in the deduction and (2)the current marginal tax rate versus the future marginal tax rate.

Example. George Jensen has long term capital gain property with an adjusted basis of $35,000 and a fair market value of $45,000. Mr. Jensen's adjusted gross income is $90,000. He can either take a current deduction of the property's adjusted basis of $35,000 which falls under the 50% limit or take a current deduction of $30,000 (30% *adjusted gross income of $90,000) and carry-over the remaining $15,000 to be deducted against future income. If the alternative rule is used there is no carry-over allowed.

Special rules. There are special rules for donations to private non-operating foundations and private charities. Donations of long term capital gain property to private charities must be reduced by any unrealized appreciation. If a taxpayer makes contributions to a public charity that fall under both the 50% limitation and the 30% limitation, the limitations are applied in a specific manner.

Alternative Minimum Tax. When a taxpayer donates long term capital gain property to a qualified charity, he or she is entitled to claim a deduction for the property's fair market value. For purposes of the alternative minimum tax, the excess of the fair market value above the property's adjusted basis is a preference item.

Example. Marshall Goldberg donates a parcel of real estate to the University of California. The fair market value is $40,000 and the adjusted basis of the property is $5,000. Mr. Goldberg claims a deduction of $40,000 for regular income tax. However the $35,000 of

unrealized appreciation is a preference item under the rules for determining the alternative minimum tax.

Charitable Remainder Trusts. A current charitable deduction for income tax purposes is created even though the taxpayer will receive income for life. The amount of the deduction is based on: (1) the fair market value of the assets placed in the trust; (2) the number and ages of the beneficiaries; (3) the fixed percentage to be paid to the beneficiary or beneficiaries for a unitrust or the sum certain in the case of a annuity trust; (4) the frequency of the payment to the beneficiaries. The payment may be quarterly, semi-annually or annually. A list of tables is found in the Treasury regulations to determine the present value of the unitrust amount.

Federal and State of California individual income tax rates for 1992 are presented in Exhibit II.

EXHIBIT II

INDIVIDUAL TAX RATES FOR 1992

Federal Individual Rates

Married taxpayers filing a joint return pay 15% of the first $34,200, 28% of the amount between $34,000 and $82,150 and 31% of the amount above $82,150.

Single taxpayers pay 15% of the first $20,350, 28% of the amount between $20,350 and $49,300 and 31% of the amount above $49,300.

Certain itemized deductions are subject to a 3 percent cutback. The reduction is 3 percent of Adjusted Gross Income in excess of $100,000. A taxpayer cannot lose more than 80% of these deductions. The result is the highest effective marginal tax rate exceeds 31%.

Personal and dependency exemptions are reduced by 2% for each $2,500 or fraction thereof that Adjusted Gross Income exceeds a threshold. The threshold is $150,000 for married taxpayers, filing jointly and $100,000 for single individuals.

California Personal Income Tax

Married taxpayers filing jointly pay 9.3% on taxable income between $57,670 and $200,000, 10% on amounts between $200,000 and $400,000 and 11% on amounts over $400,000.

Single taxpayers pay 9.3% on amounts between $28,835 and $100,000, 10 percent on amounts between $100,000 and $200,000 and 11 percent on amounts over $200,000.

Gift Tax. When a charitable remainder unitrust is established there are two gifts created. The first is the remainder interest to the charity which does not have gift tax consequences because of the gift tax charitable deduction.

The second gift is the income interest to the beneficiary. If the donor's spouse is the beneficiary, the unlimited gift tax marital deduction applies. Of course if the donor is also the beneficiary of the income interest there are no gift tax consequences. However, if someone other than the donor or the donor's spouse is irrevocably named as the beneficiary, a

gift tax may be incurred on the present value of the income interest. This amount would qualify for the annual $10,000 gift tax exclusion. If the gift is over $10,000 the donor would have to use part of his or her lifetime unified estate and gift tax credit. The unified credit is $192,800 and can be used to offset either gift tax or federal estate tax. A credit of $192,800 is equivalent to a $600,000 deduction.

Estate Tax. When the donor is also the beneficiary of a charitable remainder unitrust, all or part of the value of the trust assets must be included in the donor's gross estate at death. However, all portions considered part of the gross estate, including the charitable remainder interest, qualify for the estate tax charitable deduction.

There are no estate taxes incurred on a charitable remainder trust if the donor's spouse is irrevocably named as the life beneficiary. If the donor has made an irrevocable gift of the income interest to someone other than the donor's spouse, the value of the income interest is considered a lifetime taxable gift. The donor's estate is increased by the value of all lifetime taxable gifts for the purpose of determining the estate tax. Previous gift taxes paid can be used as a credit to reduce any estate taxes due. Also a donor may use part of his lifetime estate and gift tax unified credit to offset gift taxes on gifts exceeding the $10,000 per year annual exclusion.

Selected Federal Estate and Gift Tax rates for gifts and deaths made after 1992 are presented in Exhibit III.

EXHIBIT III

FEDERAL ESTATE AND GIFT TAX
FOR GIFTS MADE AND DEATHS AFTER 1992

Marginal Tax Rates Are High For Substantial Taxable Estates

Over $1,000,000 but not over $1,250,000 the tax is $345,800 plus 41% of the amount between $1,000,000 and $1,250,000.

Over $2,000,000 but not over $2,500,000 the tax is $780,800 plus 49% of the excess of the amount between $2,000,000 and $2,500,000.

Over $2,500,000 $1,025,800 plus 50 percent of the excess of such amount over $2,500,000

Unified Credit

The amount of this lifetime credit is currently $192,800. This amount of credit offsets tax on $600,000 of taxable transfers.

Deduction for Charitable Contributions

An estate may deduct the value of any transfer of assets to a qualified charitable organization.

For a charitable contribution to be deductible, it must consist of the decedent's entire interest in the underlying property unless the transfer is in a specific statutory form such as a charitable remainder trust.

If the beneficiary of the trust is someone other than the donor or the donor's spouse, and the donor has retained an interest through the right to revoke the beneficiary by will, the value of the entire property is included in the donor's estate. However, the value of the charitable remainder interest is deductible.

Continuing Interest Beyond Donor's Death. If there is a surviving or second beneficiary's annuity then estate taxes may be imposed on the value of that interest. If there is any possibility that estate taxes may be payable from the trust's assets, the IRS has ruled that the trust will not qualify as a charitable remainder annuity trust. A charitable remainder

trust cannot make any payments other than those to the beneficiary and the charitable remainderman. To avoid disqualification of the trust, the secondary life beneficiary needs to be required to pay any possible taxes for which the trust may be liable. One planning technique is for the donor's estate to make adequate provision for any possible taxes to be paid from another source. The trustee will have give the contractual right to recover any estate taxes imposed on the trust from the surviving beneficiary, if the other sources are not sufficient to pay the taxes.

Tax Consequences to Beneficiary. The annual amount received by the beneficiary of a charitable remainder unitrust is considered taxable income to the beneficiary. The prescribed order of distributions results in deferring the recognition of any nontaxable receipt by the income beneficiary. All of the distributions are to be considered ordinary income to the extent of the sum of the trust's ordinary income for the current year and any undistributed ordinary income from prior years.

Distributions are treated in the following order:

(1) First, distributions are considered ordinary income to the extent of the sum of the trust's ordinary income for the current year and any undistributed ordinary income from prior years.

(2) Second, distributions are treated as capital gains to the extent of the trust's undistributed capital gains.

(3) Third, as other income (e.g. tax-exempt income) to the extent that the trust has other income for the current year and undistributed other income from prior years.

(4) Fourth, as a distribution from the trust's corpus.

Conclusion

Deferred gifts are an attractive alternative for donor's who wish to benefit an educational or charitable organization. Advantages are summarized in Exhibit IV.

Properly structured an immediate income tax deduction is obtained. Appreciated real estate which is producing a low yield is especially attractive. Capital gain tax on the appreciation element is avoided. In addition yield may increase as the real estate is liquidated by the trust and invested in securities. Estate tax is avoided if the beneficiary of the income interest is the donor or the donor's spouse.

EXHIBIT IV

PLANNED GIFTS

- -- Can be made during lifetime or by will.
- -- May protect and even enhance financial security.
- -- Retain or increase income.
- -- Deduct part of the gift as an immediate charitable contribution.
- -- Avoid or reduce capital gains tax.
- -- Enjoy freedom from investment responsibilities.
- -- Reduce estate taxes.
- -- Deferred gifts.
- -- Transfer of real estate, securities, or cash, with a provision that periodic payments be made to the beneficiary or beneficiaries for life.
- -- After death of last beneficiary, the charitable organization receives the remainder interest.
- -- Deferred gifts must meet the internal revenue code requirements for charitable remainder trusts.

APPENDIX I

DEFERRED GIVING AT THE UNIVERSITY OF CALIFORNIA, BERKELEY

Funding from the private sector has helped the University of California to be on the forefront of research and academic excellence. This help is even more important as state resources are subject to many claimants.

The Trust and Bequest Office of the Berkeley Foundation at the University of California, Berkeley assists individuals who would like to make a gift to the University. The Trust and Bequest Office offers guidance to potential donors in designing a bequest or other form of deferred gift.

The most common technique of deferred giving is bequests, naming the University as a beneficiary in the donor's will. This technique has the advantage that a taxpayer can change his or her will and revoke the gift. There are no income tax benefits with this technique. There is a charitable deduction for estate tax purposes.

In addition to gifts of real estate which are discussed in this paper, many donors give securities. Donating appreciated securities is often a more economical way of giving then selling securities and giving cash. This is because a donor receives a deduction for the fair market value of the securities for income tax purposes. If the appreciated stock was first sold the donor would have to pay capital gains tax on the sale. Since the appreciation element is a tax preference for alternative minimum tax purposes a taxpayer who is subject to the alternative minimum tax should have his or her tax situation reviewed by a professional advisor.

Gifts of appreciated securities can be used in a deferred giving program. The gift is made to a charitable remainder trust with consequences similar to a gift of real estate. Gifts of securities are appropriate for a unitrust, an annuity trust, or a pooled income fund. Under all three, income tax and estate tax advantages are received.

Donors can contribute gifts to either the University of California, Berkeley Foundation or to the Regents of the University of California. The Regent may distribute the gift to any of the nine campuses unless the donor specifically restricts the gift to the Berkeley campus.

Both the Regents and the University of California, Berkeley Foundation offer donors pooled income funds. The Berkeley Foundation has two pooled income funds, each with a different investment objective. Pooled Income Fund I stresses income, while Pooled Income Fund II seeks a balance between growth and income.