

Charitable Remainder Trusts Part I: The Aspiration of Stewardship

By Margaret Stout and Leigh Harter

In this first part of the two-part article, Margaret Stout and Leigh Harter discuss the history and philosophical beginnings of charitable remainder trusts and the impact of this giving strategy on the sustainability of nonprofit organizations.

Introduction

This two-part series discusses both the philosophy and the nuts and bolts of Charitable Remainder Trusts (CRTs) and Charitable Remainder Unitrusts (CRUTs) in particular. Part I will focus on the spirit in which these financial tools were created. The original purpose of these trusts was not about tax shelters for the wealthy, short-term benefits to cash-flow or legal codes and loopholes. It was not about complex forecast modeling that accounts for every possible financial variable. It was and continues to be about stewardship. It is about a community leader who had a plan for enabling common people to advocate for their values, while taking care of themselves and their families both ethically and financially. More importantly, it is a lesson for public policy and estate planning practitioners whose foresight can either encourage or destroy this charitable intent.

Charitable Intent: Footprints in the Sands of Time

Most research supports the assertion that the primary reason for making a charitable donation is

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the desire to create public good. "Philanthropy is ... about donors' using their funds to explore their own private visions of the public good."¹ "Etymologically, philanthropy means 'love of human beings.' In practice, the term is often used to describe gifts of the wealthy to the non-wealthy."² However, the desire to be philanthropic can be felt by anyone who seeks to further the public good. Harvard theorist Peter Frumkin provides an excellent overview of the values and characteristics of the nonprofit sector. "An important part of nonprofit and voluntary activity is expressive in character and speaks to the need people feel to enact their values through work, prayer, philanthropy, and volunteerism."³ In other words, charitable intent seeks to leave one's footprints in the sands of time. Yet the desire to act philanthropically must be supported by the ability to do so. Therefore, financial considerations play a secondary but crucial role in charitable intent, in essence dictating who within our society has the opportunity to express themselves, and which values find enactment. Our goal is to expand the ability for philanthropic action, making the ability to use this strategy more inclusive. Advocates in the financial services world who understand the advantages of long-term charitable planning could help their clients build a long-term plan that encourages altruism and charitable intent while supporting wealth creation. Many parents attempt to build a set of values into their wealth transfer planning by restricting trust income should the children not meet specified career or educational objectives, but there could be a better way.

Charitable intent is based on multifaceted motivations. "Human behavior is complex, and ultimately

it is impossible to know how much giving is based on tax avoidance, how much is based on philanthropic impulses, and how much is based on a combination of the two—or those two coalesced with other factors.”⁴ “Most studies acknowledge that no single donor characteristic will account for a donor’s decision to give; they emphasize instead a combination of psychological motives and sociological influences.”⁵

Psychological and sociological motivations include both self-interest and altruism. Self-interest motives may include recognition, social status, and peer influence. Most theories about altruism accept that it is impure in most cases, and cannot be separated from other possible interests, such as “joy of giving” or the “warm glow”⁶ feelings that reflect the psychic income received from giving. In fact, empirical research has shown that few individuals appear to be motivated purely by a joy-of-giving preference. Frank⁷ argues that giving is a combination of altruism and self-interest, both of which exist to one degree or another in all people. Boulding⁸ asserts that donors give in order to receive status, recognition, or the fulfillment of other psychological benefits. Harbaugh⁹ similarly considered both warm glow and prestige motivations to giving. Panas¹⁰ links styles of giving to different views on philanthropy from a more philosophical perspective. Osterower¹¹ notes that with some charitable donors, what they receive from the charity itself in terms of social contacts and prestige as a member of the elite class is the motivating factor to giving. Odendahl¹² not only found similar results, but stated that the elite give to serve their own self-interests, rather than those of the disadvantaged.

Self-interest can also include financial motivations such as tax benefits or preservation of family wealth. “Incentives to donate to charity have existed in the tax code almost as long as the income tax itself.”¹³ The deductibility of all charitable donations provides what is in essence a federal subsidy to charitable giving, at the amount of tax dollars lost. The theory is that the nonprofit sector more than makes up for the social good that could have been produced by government using those tax dollars. Both the deductibility of charitable bequests and avoidance of estate taxes through such gifts provide a financial incentive

to leave charitable bequests. However, there is great debate regarding the “estimated magnitude of the response to tax incentives.”¹⁴ This will be discussed in the following section. The important point here is that charitable intent is motivated by both philosophical commitments and pragmatic self-interest. Therefore, tools that marry these two elements have the greatest capacity to achieve synergy, where the joy of giving is enhanced by economic advantages.

The Implications of Tax Policy on Giving

Saying that tax policy is a particularly sensitive topic is an understatement. Like the old adage, “There’s nothing certain except death and taxes,”¹⁵ policies that affect the property of private individuals must be able to withstand constitutional challenges. The founding fathers believed in the Constitution as a foundation for protecting

fundamental rights and encouraging certain behavior. While there are many arguments over the issue of taxation, legislating behavior by providing incentives and disincentives is not wholly the same as controlling individual freedom.

The history of how government policy has affected charitable giving is complex, but an overview of charitable remainder unitrusts will be helpful. The following bits of information are drawn from Michael O’Neill’s *NONPROFIT NATION*.¹⁶ In 1913, Congress determined that charitable organizations would be exempt from the newly established income tax. In 1917, Congress made individual charitable contributions income tax deductible. In 1935, the Internal Revenue Code was amended to allow corporate contribution tax deductions. President Roosevelt retained the estate tax, which had previously been used primarily to finance the world wars, as a tool to redistribute wealth. The Tax Reform Act of 1969 created a number of new rules and regulations for charitable nonprofits, such as the mandatory five-percent distribution. However, it also created the charitable remainder trust tools.¹⁷

Since 1969, charitable remainder trusts have been impacted by a number of tax policies. As originally enacted, the minimum remainder interest for the charity was five percent, but in 1997 this was in-

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creased to 10 percent to curb perceived abuses.¹⁸ However, considering the changes in the tax code since 1969 the changes to CRTs have been modest. The Taxpayer Relief Act of 1997 (TRA-96) gradually increased the estate tax exemption from \$600,000 to \$1M, and the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) gradually increased the exemption to \$2M through 2008 and \$3.5M in 2009, making charitable bequests less attractive to the moderately wealthy. Furthermore, in 1997, restrictions on the charitable deductions allowed for charitable remainder trusts, in addition to 10-percent remainder requirements were enacted.¹⁹ Most recently, the staggered repeal of the estate tax called for in EGTRRA makes bequests even less attractive. The estate tax exemption was increased to \$2 million in 2006, \$3.5 million in 2009, with complete repeal in 2010 before its reinstatement in 2011 back to the law as it was in 2001, unless there is some Congressional action before that time. Furthermore, income tax rates might decrease, discouraging charitable gifts, while charitable deductions will be made available to non-itemizing tax filers, possibly increasing gifts. However, income taxes have been on the rollercoaster since 1969. Any decrease in marginal rates or capital gain rates decreases the tax efficiency of CRTs.

Because CRTs have a much larger implication on estate taxes and capital gains over time than on income taxes, our focus is primarily on the issue of bequests. Also of concern is the nature of creating a family philosophy that encourages charitable intent at whatever scale is financially appropriate. Creation of a CRT has both estate and income tax implications. The income tax benefits accrue to the donor on a current basis, and as will be described in more detail in Part II, income tax benefits seem to be the main focus of the professionals promoting the use of CRTs as planning tools. The most significant benefit cited is the removal of low-basis investments from the grantor's portfolio into the CRT, their subsequent sale and the advantage of not paying either income or capital gains taxes within the trust. The secondary benefit, also very significant from a cash flow standpoint, is the current deduction of the present value of the ultimate gift in trust to the charitable beneficiary. Currently, long-term capital gains taxes are at a historically low rate, and income taxes have been reduced by recent tax reforms. By its nature, tax planning must be done with the expectation that current law will remain in place, although that will

not likely be the case. Gifts made into a CRT can be held for future sale at the moment when it is considered appropriate from an investment point of view. At that time the current capital gains rate is that which should be used to determine the tax importance of the CRT to the grantor.

Due to the relationship between charitable bequests and the estate tax (assuming the former is encouraged by the latter), there is quite a bit of research on the subject. However, it is more likely a popular topic due to the political charge it creates as a substantive debate between conservatives who wish to repeal all taxes and liberals who wish to support charitable purposes, but do not believe in "trickle down" economics. According to the American Association of Fundraising Counsel, \$16 billion were given in charitable bequests in 2000,²⁰ "What will happen to such gifts as the estate tax exemption amount increases or if the estate tax is ultimately repealed? Will giving increase, decrease, or remain stable?"²¹ These are important questions, given the amount of wealth accumulated by the "Baby Boomer" generation. It is estimated that \$41 trillion in wealth will be transferred from one generation to the next between 1998 and 2052.^{22, 23}

The effect of estate taxes on charitable bequests might be measured by determining the tax price elasticity of the decision, as opposed to the income or wealth elasticity. In analyzing the charitable bequests of estates smaller than \$4.2 million,²⁴ Pamela Greene and Robert McClelland found that the estate tax does affect contributions. This finding is supported by previous study results as well.²⁵ Based on their statistical modeling, elimination of the estate tax would have potentially decreased bequests by about 6.5 percent, assuming that the response across household incomes was the same. However, the impact on families of different incomes or predisposition to charitable giving could vary. In another study, the estimated reduction was as high as 12 percent.²⁶

Yet, there are scholars who debate these findings, arguing that "philanthropy can thrive without estate tax."²⁷ These claims are supported by anecdotal evidence that people plan increased giving based on an anticipated reduction in estate tax. This argument is based on the notion of wealth elasticity, asserting that repeal of the estate tax will increase wealth, and therefore charitable bequests. However, when price elasticity is added to the figures, there is still an expected net loss of charitable bequests of about 0.5 percent. If we separate those who file estate tax

returns from those who do not the percentage of those who bequeath to charities is estimated at 8 percent higher within the population of those who file.²⁸

Advocates of the repeal of the estate tax claim administrative costs exceed the proceeds, that it discourages savings, and that it represents a form of double taxation. Opponents of the repeal cite studies that demonstrate that administrative costs are actually a fraction of the proceeds, estate taxes have led to increases in philanthropic giving, and the impact of the tax on savings is negligible or even encourages increased savings to overcome the burden. However, when we only look at the economic cost-benefit of a public policy, we lose sight of the social values that have equal or perhaps even greater priority for citizens. If we measure the cost-benefit of charitable giving based on lost taxes and attack giving tools and incentives as a result, we disregard the value achieved through investment in the nonprofit sector. If we measure the cost-benefit of estate taxes as a loss to families, we ignore the need that society has for a common good achieved through a combination of government and nonprofit action. We rely on an individual notion of responsibility for oneself and oneself only, and economic theory clearly shows us the consequences in the parable of the Tragedy of the Commons.²⁹

Because this is a stewardship view of the implications of tax policy, for our purposes the most important arguments are in regard to the effects of estate taxes on philanthropic giving. Proponents of the estate tax repeal rely heavily on the notion of supply-side or “trickle-down” economics. That is, with less estate tax, inheritors will have more wealth, and they will make larger donations to charities. However, fundraisers have noted that potential donors have indicated that the repeal of the estate tax is causing them to *decrease* their planned gifts. Furthermore, charitable giving actually fell in 2002, for the first time in over a decade. In fact, it dropped at a rate of 1.2 percent, as compared to a previous five-year increase trend of 12 percent annually.³⁰ This may partially be inertia in response to uncertainty; however, these observations appear to indicate that both economic strength and changes to tax law have a substantial impact on giving.

Most arguments regarding the impact of tax policy on charitable giving rely on sophisticated economet-

ric analyses of the financial variables that may impact the decision to make a donation or bequest, without specifically disaggregating income from estate tax impacts. However, some of the studies successfully do so. Basically, what is measured is the after-tax “price” or cost of the bequest as affected by level of income.³¹ In a comprehensive review of these types of empirical studies, Patrick Rooney and Eugene Tempel concluded that for the most part, the savings garnered in tax savings does encourage charitable giving. The only way this pattern changes is when one of the following conditions apply: 1) the wealth effect (the impact of owning more wealth) exceeds the price (tax) effect (the after-tax cost of a bequest); 2) those making the bequest have a fixed expectation (inelastic demand) of the amount they wish to give to their heirs and charity; or 3) the heirs use the inheritance to generate wealth and make a larger charitable gift than their parents would have given.³²

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Democratizing Philanthropy

Because of these statistically significant and causal relationships, the estate tax repeal has enjoined enormous controversy over the idea of elitist control through further concentration of wealth and political power, versus the democratization of wealth. Control over any sector’s resources represents significant privilege, and can be used well or abused. As noted by the research on elite philanthropists, there is an established culture that is likely interested in maintaining somewhat of the status quo of influence and prestige.³³ On the other hand, stewardship approaches are imbued with a purpose “to preside over the orderly distribution of power.”³⁴ Surprisingly, some of the most ardent supporters of retaining the estate tax in order to motivate charitable giving are also some of the nation’s wealthiest individuals, such as Ted Turner and Bill Gates, Sr.³⁵

Some proponents of the estate tax seek to “avoid excessive concentration of wealth in relatively few hands.”³⁶ What was once the domain of the very rich that could establish foundations or make major donations to charitable organizations has been democratized by the opportunities afforded by the CRUT and similar tools. Some arguments appear pragmatic: “Such a democratization of the use of tax shelters threatens to strain the resources of tax

enforcers and add to the burden of taxpayers."³⁷ Unfortunately, these views do not align with fact: "The IRS devotes relatively little staff time and other resources" to the oversight of nonprofits.³⁸ Furthermore, such simplistic views do not account for the value assumed by tax shelters that fund charitable purposes. Such uses offset both the funds required by the government to oversee their administration, and the saved dollars in funding public goods. The government routinely supports such funding by "providing funding to charities providing similar services itself, and using the tax code to subsidize charitable giving by individuals."³⁹ As often pointed out, taxes constitute "involuntary philanthropy," in that they force individuals to help fund public goods.

What may be more insidious is the belief that common people should not be empowered with the leverage that wealth can bring in setting the social agenda for the nonprofit sector. There is historic evidence of concern over the power of the nonprofit sector. In 1916, a congressional investigation known as the Walsh Commission reported that "a few wealthy families, having gained control over much of the nation's business and some of its political structures, were using foundations and other philanthropic mechanisms to gain control of America's charitable sector."⁴⁰ A later investigation in 1961 was made as a result of similar challenges. However, the report of the findings stated that "private foundations have an important part in this work [of philanthropy]. Available even to those of relatively restricted means, they enable individuals or small groups to establish new charitable endeavors and to express their own bents, concerns, and experience. In doing so, they enrich the pluralism of our social order."⁴¹

The issue of the estate tax may be a case in point. It is not far-fetched for some to conclude that the goal may be to increase spending and investment in the for-profit sector, (and through its taxation, the public sector) while reducing investment in the nonprofit sector. The truth is that the vast majority of the very wealthy pay little or no estate tax, due to complex financial and charitable gift planning. It may be possible that those impacted most heavily by the estate tax are the upper bracket of middle-income families who are struggling to build wealth for their children and grandchildren. If a person is leaving more than \$1 million to their heirs, he or she is an elite member of five million peers. It could be argued that the families who really need the tax incentive for giving are leaving estates under that threshold and do not typically

engage in charitable gift planning. However, repeal of the estate tax for these individuals cannot ensure that they will actually continue to build wealth for their families. Unfortunately, there is a dearth of research on the effects of these issues on the "nonrich"—the middle class American.

The Stewardship Rationale for Giving

The notion of charitable giving tends to clash with our capitalist culture. "The economics of prosperity have become the 'credo' of modern society—but it overrides and stifles all other values, convictions and ways of life."⁴² "We take things for granted, and our culture promotes individualism as a way of life. We don't have a strong sense of the common good."⁴³ The sense of the common good that is based in religion might be considered an older system of values with a concept of social *justice* not aligned with the modern ideal of equality. "Stewardship" is founded in the idea that all of creation is a gift for which we should be grateful, and with which we should be both generous and responsible to ensure fairness for all.⁴⁴ Similar to this notion is that of "tithing," which refers to the gift of ten percent of what one is blessed with, including money, talent, and time.⁴⁵ In addition to the moral and ethical foundation for charitable activity that can be academically analyzed, over two thirds of the individuals surveyed in a British study strongly agreed that they felt a warm feeling of personal satisfaction from donating to charity,⁴⁶ the "warm glow" effect previously referenced.

Because of its widespread use in everything from organizational management to environmentalism, it appears that despite its religious roots, stewardship is a concept that rings true for people for secular reasons as well. On environmental stewardship, Jimmy Carter suggests, "We must find ways to lessen the burden on Earth's resources, and we must encourage better stewardship of the planet so that all of us live in a clean and productive environment."⁴⁷ A whole host of management theorists have written on stewardship and attitudes of service. Robert K. Greenleaf⁴⁸ coined the term "servant leader" to describe a leadership model based on stewardship. Peter Block built on similar principles in his management theory book, *STEWARDSHIP: CHOOSING SERVICE OVER SELF-INTEREST*. He writes, "Stewardship not only affects the use of power, but it also confronts the way we hold privilege ...

Holding on to privilege is an act of self-interest, the antithesis of service and stewardship.”⁴⁹ Peter Senge⁵⁰ similarly describes the stewardship responsibility of organizational leaders. Some authors even refer to “civic stewardship.”⁵¹

Unfortunately, the notion of stewardship is curiously missing from much of the financial planning literature outside of an ecumenical context. But regardless of faith practices, one author sagely notes, “How you handle your cash says a lot about what you value the most.”⁵² Stewardship is not a get-rich-quick approach to wealth. Stewardship requires managing wealth wisely for the long term.⁵³ Furthermore, stewardship leads toward a view of wealth as *enough*, rather than *more*. “That is the foundational difference between stewardship and economics.”⁵⁴ This stewardship perspective was the core purpose of the original nonprofit advocates of charitable remainder trusts—to ensure that one’s family has enough, while seeking increased social justice through philanthropic giving.

An Unwritten History

Based on this philosophy of stewardship, one community leader made it a life’s work to promote charitable giving tools and tax laws that would enable every family to become an important player in establishing social values while maintaining its self-sufficiency. In the 1960s, the late Reverend Gilbert G. Stout, Ph.D. (the co-author’s father) was the director of Stewardship and Finance for the United Methodist Church General Board of Lay Activities. Having a theological background, rather than relying on economic and political theory rationales for charitable giving, he held a larger view of the nonprofit sector as a vehicle for stewardship. “A full rationale would need to draw on many other disciplines such as, for example, moral philosophy and the theories of justice, psychology, sociology, history, and so on.”⁵⁵ Dr. Stout’s primary stewardship agenda was to increase the sustainability of not only churches, but of the nonprofit sector as a whole. It is through this sector that individuals and families can ensure that the things they most value and believe to be of benefit to humanity can be pursued.⁵⁶

Dr. Stout had successfully funded and built new churches in parish after parish during his ministerial career and, in his role as Trustee, had raised a great deal of money for colleges in Iowa. However, he recognized that pursuing gifts on a year-to-year basis was not the most effective way to ensure the longevity of any nonprofit organization. Therefore, he began doing research on the few examples of tax-free bequests that had established important institutions such as the first public library in Philadelphia and the school at West Point, as well as on the major family foundations of the time. Dr. Stout realized that due to various forms of taxation, our financial system had lost something important—a broad capacity for un-

taxed growth. As Benjamin Franklin described it, “Remember that money is of a prolific generating nature. Money can beget money, and its offspring can beget more.”⁵⁷ “The only way for society to fully address its important social, spiritual, and community goals is through the nonprofit sector. Yet, the only way for the

The most significant benefit ... is the removal of low-basis investments from the grantor's portfolio into CRT, their subsequent sale and the advantage of not paying either income or capital gains taxes within the trust.

nonprofit sector to have sufficient leverage and be sustained in perpetuity is through the tax-free economy. Without taxes, capital grows, and it is through this growth that nonprofits can pursue their missions with significant capacity. Furthermore, families of moderate means cannot build substantial wealth while their savings’ growth is being taxed.”⁵⁸

At that point in time, the primary tool available for a family’s capital growth was the nonreserve annuity. Because all assets were ostensibly available for use, both the growth and the payouts were taxed as income, as with any other investment. Therefore, a growth tool was necessary that would have the right to fully reserve funds. The hope and plan was that this could become the engine of family savings that would ultimately fund the nonprofit sector in perpetuity, while normal income taxes funded the government. Dr. Stout hired a legal team to support an initiative to design and pursue the needed tools: Sidney Prerau and Conrad Teitell. Their subsequent Congressional testimony and negotiations with the Senate’s Ways & Means and Finance committees substantively led to the implementation of the Charitable Remainder Unitrust (CRUT) and Charitable Remainder Annuity Trust (CRAT) through the 1969 Tax Reform Act. These tools were initially conceived as 100-

percent reserve funds, but were later changed to require a five percent annual payout that would be taxable, similar to the requirements for foundations. Having the ability to name any living beneficiary, these tools have the potential to allow 95 percent of the principal to grow compounded and untaxed for three generations while title to the assets remains in trust for the named charity. At the end of the last beneficiary's life, the remainder is given to that charity. When the trust is established it must project a very modest 10-percent remainder interest that is irrevocably directed to the charity.⁵⁹ The five-percent exhaustion rule, put in place in the 1970s, which must be applied to CRTs, has been criticized for its failure to accomplish the intent of disallowing charitable gifts that will not come to fruition, and instead penalizing genuine charitable intent.⁶⁰ With the exception of this one somewhat flawed revenue ruling, the serial evolution of the tax code over the last 38 years has not significantly impacted this potentially magic tool that not only encourages charitable intent but can also create significant wealth on a long-term basis for relatively middle class families that recognize the synergy that their charitable intent and saving ethic can have when combined with long-term tax advantaged income and growth.⁶¹ Consider the potential for any family who feels a responsibility to include volunteer efforts on behalf of their favorite charity, for example, the American Heart Association, and works to include their charitable efforts in the legacy they pass to their children. They are already making gifts of both time and money; with modest changes they could create a charitable legacy and build serious long-term wealth without any impact to their budget.

To Dr. Stout, who believed that capital is somewhat sacred, these tools and their anticipated use represented the zenith of his life's work.⁶² The use of these tools and illustrations of their outcomes for families and charities alike will be highlighted in the second part of this two-part article, *Charitable Remainder Trusts Part II: The Miracle of Multigenerational Growth*.

A Call to Action

Before delving into the details of how Charitable Remainder Trusts operate, we would like to end this more philosophical discussion with a call to action for those who hold the greatest influence over the perpetuation of these critical tools for stewardship: policy makers and citizens as well as the financial advisors who help them build their long-term financial plans and charitable initiatives.

Researchers at the Center on Philanthropy at Purdue University in Indianapolis have made perhaps the best policy statement that could be heeded by government officials, nonprofit development officers, and estate planners alike. Because repeal of the estate tax and its potential consequences to charitable giving "may represent a major sea change in the way our society determines how a portion of wealth is given in public benefit at death ... a decision of this magnitude should have thorough public discourse and full understanding of the consequences."⁶³

While estate taxes are being repealed and the income tax rate is being decreased, the gift tax is retained at the maximum income tax rate.⁶⁴ Repealing the estate tax, while retaining the gift tax, provides a double incentive. In fact, as reviewed in this paper, there is a wealth of research that indicates that many of the supply-side arguments that the repeal of the estate tax will lead to larger distributions of wealth to heirs and charities does not play out in reality. Alternatively, the estate tax "sends a signal to the American people that our society values individual philanthropy so highly that it offers the taxpayer a choice between giving his or her wealth to charity or giving it to the government."⁶⁵

Such a symbolic value has been quantified for the income tax deduction.⁶⁶ However, this quantitative analysis is even more delicate when it comes to estate taxes. The issue of death is a sensitive one and financial, estate, and insurance professionals often do not feel comfortable promoting bequest approaches unless there is a substantive tax benefit involved by way of reducing estate tax liability. According to surveys of financial advisors, many of these professionals indicate that the estate tax is the only reason for them to bring up such a touchy topic, and the estate tax is the only incentive they can offer to persuade clients to give.⁶⁷ In the 2000 National Committee on Planned Giving's survey of charitable donors,⁶⁸ 68 percent of those with a charitable remainder trust said their financial or legal advisor had been the source for the idea. Furthermore, 77 percent of these respondents cited the desire to reduce taxes as an important factor in their decision to make the gift. Thus, without the estate tax, charitable bequest planning may become the domain of individuals with a personal charitable intent who are proactive in seeking guidance from their trusted financial advisors, clearly not the majority of givers.

With this anecdotal evidence in mind, let us consider the implications. First, we assume that the repeal of the estate tax will cause financial planners to rarely initiate CRUTs. Second, we know that CRUTs currently have

about \$64 billion in assets. Third, we know that over half of those who formed trusts, who were advised to do so by their financial planner, did so to avoid taxes. Fourth, we know that both income taxes and estate taxes are declining for the time being. Putting it together, had all these variables been in place since 1969, it would be unlikely for the nonprofit sector to have received at least \$32 billion of their forthcoming assets.

Clearly, the principles of giving that are adopted by the current wealth-building generation is of critical importance to the future of the nonprofit sector. According to a survey of donor attitudes conducted in 2000 for the fundraising firm of Craver, Mathews, Smith and Company, "Baby Boomers" do not indicate the level of charitable intent as do mature donors.⁶⁹ In fact, they have become "more cynical and disillusioned than their parents' generation."⁷⁰ Perhaps if this generation is more frequently offered stewardship models from which to work, they may be more inclined to give. In the book *THE RHYTHM OF COMPASSION: CARING FOR SELF, CONNECTING WITH SOCIETY*, Gail Straub notes, "The stewardship ethic helped people simplify their lives, reprioritizing what really mattered like family, community, and time for long forgotten dreams. As an antidote to the addiction of consumerism, stewardship could help heal the spiritual emptiness at the core of so many lives."⁷¹ It is about managing life so that one can "say yes to the opportunity to help someone else."⁷²

A new approach to philanthropy as well as increased concerns over sustainability in all corners of the globe is becoming evident as the Baby Boomers enter their wealth-building years. High impact philanthropy refers to "a growing awareness among new donors about how they can participate in shaping vigorous communities through gifts that transform."⁷³ Another common term being used is legacy planning. Simply defined, a legacy is something handed down from one generation to those that follow. "In *Unlocking Your Legacy: 25 Keys for Success*, Paul Meyer ... suggests that it includes traits, habits, talents, and attitudes that are social, physical, mental, spiritual, and emotional."⁷⁴ The point is, everyone leaves a legacy whether they intend to or not. "We are all stewards of our profession, our organization, our family, and our societal responsibilities. Stewardship

translates into being responsible and serving others and leads to stability in meeting those responsibilities or initiatives of which we are a part."⁷⁵

"Many of the 'new' philanthropists pride themselves on being very hands-on, applying the principles of business to philanthropy, and investing in long-range solutions ..."⁷⁶ Many prefer to have more responsibility and power in their philanthropic decision making "Just who is going to solve our nation's burgeoning problems?"⁷⁷ "Newtithing" is a term coined by long-time investment manager Claude Rosenberg, Jr. This is a complex method of determining how much a household can comfortably afford to give out of surplus income after debt and investments and expenses are covered (www.newtithing.org).⁷⁸ This method is designed to ensure that personal needs are met first, but with an ongoing eye on a charitable goal, much like a CRUT. Charitable Remainder Trusts can also act as a tool to fund for various life needs: college education,⁷⁹ acquisition of a first home or funding for a new business opportunity. Philanthropically minded people who are also seeking to build wealth are ideal CRUT candidates. These are people who are not of the means to create a family foundation outright. In 1998, 64 percent of the CRUTs in existence had assets of less than \$500,000.⁸⁰ Clearly, this is a tool that is more frequently used by the moderately wealthy. It is therefore important that the availability of CRUTs is explained to individuals and families in this category.

The truly encouraging aspect of these new approaches to planning for charitable giving is the prospect of a new wave of philanthropists establishing a new tradition for their families. "I have ... seen how the tradition of giving can strengthen family bonds while conveying essential values and social responsibility to children and young adults."⁸¹ The existence of a CRUT within a family can "set the bar" creating an assumed moral obligation to the community at whatever level is important to each generation (local, country and world). It was toward the establishment of this multigenerational charitable ethic that the CRUT was intended. With effort, policy makers, financial advisors, and nonprofit leaders can help families reconnect with this charitable purpose. In the next issue, we will turn to the details of how it can work.

ENDNOTES

¹ Peter Frumkin, *ON BEING NONPROFIT: A CONCEPTUAL AND POLICY PRIMER* (2002), at 105.

² Michael O'Neill, *NONPROFIT NATION: A NEW LOOK AT THE THIRD AMERICA* (2002).

³ *Supra* note 1, at 96.

⁴ Patrick M. Rooney and Eugene R. Tempel,

Repeal of the Estate Tax and Its Impact on Philanthropy, 11 *NONPROFIT MANAGEMENT & LEADERSHIP* 1 (2001), at 193.

⁵ Wesley E. Lindahl and Aaron T. Conley, *Literature Review: Philanthropic Fundraising*, 13 *NONPROFIT MANAGEMENT & LEADERSHIP*

1 (2002), at 91.

⁶ James Andreoni, *Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving*, 100 *J. ECONOMICS* (1990), at 464.

⁷ R. Frank, *MOTIVATION, COGNITION, AND*

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