Alumni Enjoy Distinguished Wasserstein Hall, Caspersen Student Center, Clinical Wing Building Dedication

Last April, over 600 alumni and guests returned to Cambridge for Reunion Weekend to enjoy a celebration with classmates and friends. During the reunion, alumni engaged in an exciting selection of lectures, panels, symposia, receptions, dinners, and tours. They witnessed history as the Wasserstein Hall, Caspersen Student Center, Clinical Wing Building (WCC) was officially dedicated. Over the weekend attendees heard from Harvard Law School professors who spoke about their research, learned more about exciting new initiatives on campus, and reconnected with old friends.

In one session, Dean Martha Minow highlighted some of her key priorities at the Law School, including her commitment to strengthening the ties between the legal profession and practice and to teaching the importance of innovation and entrepreneurship. She spoke about new faculty appointments as well as programs that educate across disciplines and transcend boundaries with other schools throughout Harvard, including Harvard College and Harvard Business School. She underscored the important role that alumni play in the life of the School and encouraged their feedback and suggestions.

The centerpiece of the weekend was the dedication ceremony for the WCC. The Honorable Elena Kagan JD ’86, Associate Justice of the Supreme Court of the United States, described the genesis of the WCC and along with Drew Faust, President of Harvard University, former HLS Dean Robert Clark JD ’72 and Harvard Law School Dean Martha Minow, expressed deep gratitude to our alumni who helped make the building possible.

There were many fascinating presentations by faculty. To highlight a few: Dan Coquillette JD ’71 gave an informative presentation entitled: *A Look at Harvard Law School’s History Through Its Buildings and Leaders*; Jody Freeman LLM ’91, SJD ’95 provided an in-depth view of U.S. Energy and Climate Policy; Peter Carfagna JD ’79 led a panel discussion on *The Legal Evolution of America’s Major League Sports*; and Gabriella Blum LLM ’01, SJD ’03 spoke about the new field of drone miniaturization and its implications for military and civilian use.

It was wonderful to welcome so many alumni back to campus. If you were unable to join us then, we hope you can make it back to Cambridge soon.

Inside this newsletter you will find photographs from the WCC Dedication and from last spring’s Reunion as well as articles on ways that you can help support the wonderful work Harvard Law School is accomplishing today and will accomplish in the future.
Charitable Planning in Today’s Tax Climate

Federal gift, estate and generation-skipping transfer tax laws, not to mention income tax rules, are in flux. In the normal course of business, things change from year to year but we are now facing some of the most dramatic changes in more than a decade. Estate plans need built-in flexibility in order to adjust to changes in tax rates, exemption levels and available deductions. One thing that has remained constant, though, is every person’s goal of mitigating the potential impact of transfer taxes and interest in providing more for loved ones and preferred charities.

For now, we know the top estate and gift tax rate is 35% and the estate tax credit results in an exemption amount equal to $5.12 million per person. The current law is relatively favorable in terms of transferring wealth to family members without incurring transfer taxes. Many commentators have suggested that acting now is a good idea because on January 1, 2013 rates are scheduled to revert to 2001 levels: a top-rate of 55% and an exemption amount of $1 million.

Estate plans occasionally need to be updated because of changes in the tax code or in personal planning. Now might be a good time to revisit your own estate plan. Of course, thoughtful planning involves all aspects of a person’s circumstances—including philanthropy. In this newsletter, we point out different ways to incorporate charitable goals into your overall planning.

**Charitable Gifts of Retirement Assets**

Individuals saving for retirement likely own an Individual Retirement Account (IRA) or a tax-deferred retirement plan account such as a 401(k). There are rules and limits on how much one can save for retirement using these accounts, when the distributions are made, and how the distributions will be taxed.

The tax-deferred nature of IRAs and qualified retirement plans is a clear benefit for the plan owner. However, when it is time to take required distributions, that benefit ends for the amount withdrawn: distributions are typically taxed as ordinary income which may result in the loss of a significant portion of each distribution. People rely on these accounts to provide income in retirement, and expect to pass on what they don’t use to heirs, to charities, and to other beneficiaries. Considering the tax cost of the distribution, utilizing retirement assets to make charitable gifts, instead of other assets, may be a tax-efficient and good planning option.

Generally speaking, a *lifetime* charitable gift using retirement assets as a direct donation to the charity is not possible without the owner first taking a taxable distribution from the account. The IRA Charitable Rollover was an exception: a distribution directly from an IRA to a qualified charity was not considered income to the donor. Unfortunately, Congress made the provision temporary and it is not currently in effect. Congress renewed the IRA Charitable Rollover for two years in 2008 and in 2010, and may do so again for 2012-13, but has not yet acted.

If you are in the position of having to take a required minimum distribution, to pay tax on it, and are not spending it, you can use it to make a charitable gift and receive a mostly, if not entirely, offsetting charitable income tax deduction. Or better yet, contribute appreciated securities equal in value to your withdrawal and purchase the same amount of stock (even stock in the same company that you donated), thereby stepping up your basis and possibly saving an additional 15% in capital gains tax. This strategy also works if you are interested in funding a charitable gift annuity or remainder trust, both of which will generate a partially offsetting tax deduction and provide you with an income for life.

If utilizing a retirement plan asset for an inter vivos gift does not make sense, naming a non-profit organization such as Harvard Law School as a beneficiary of an IRA or qualified retirement plan account can be an attractive way to make a *testamentary* charitable gift. Using the beneficiary designation option, you would name Harvard Law School as the beneficiary of a percentage, which may be up to 100%, of the retirement plan or IRA and you would maintain the flexibility to alter the percentage if circumstances change in the future. Your designation controls the distribution of the account (instructions left in a will or trust have no effect if the asset is not left to the estate or the trust). The plan or account administrator will have a beneficiary designation form for you to complete. Making Harvard Law School the beneficiary of the IRA or retirement plan is a straightforward way to donate those assets to HLS.
Why give retirement assets to Harvard Law School? Consider the following scenario: you decide to equally divide your estate between your two children and the Law School. You own an IRA worth $1 million, a securities portfolio worth $1 million and a home worth $1 million. All things considered, you should designate the IRA to the Law School and leave the home and securities to your children. Harvard Law School is a tax-exempt entity and as such is not liable for income tax on amounts it receives from IRA distributions as your children would be. In effect, the children can end up with more while the benefit to the Law School remains the same.

THE SPOTLIGHT:

The Charitable Lead Annuity Trust

Not every gift to charity is an outright gift. Certain gifts can benefit both a charity and an individual, yet still qualify for a tax deduction. Gifts such as a split-interest charitable trust, partial interest gifts and charitable gift annuities all have a charitable gift component and also may include a gift for a non-charitable beneficiary. Determining what part of the gift the donor can deduct involves the calculation of the value of both interests—that of the charity and that of the other beneficiary.

During this time of low interest rates, donors should be aware of advantages available to certain charitable gifts. One option is a charitable lead annuity trust (also known as a “CLAT”). A non-grantor CLAT pays the charity for a number of years, and then the remaining assets in the trust go to non-charitable beneficiaries (usually family members).

A low AFR increases the present value of the charity’s expected income interest, which increases the gift or estate tax charitable deduction and which reduces the value of the remainder interest used to calculate federal transfer taxes. So, the lower the AFR, the lower the potential gift or estate tax liability. Moreover, if the assets inside the CLAT appreciate, the excess value escapes taxation when it ultimately passes to family members.

What a Difference Two Years/Two Percentage Points Makes

To illustrate the effect of the AFR on a non-grantor CLAT, compare a lead trust created in June 2010 with one created in September 2012:

- Both trusts are funded with securities worth $1 million.
- The annual payout to charity is 7% or $70,000 each year.
- The length of the trust term is ten years.
- After ten years, the trust remainder goes to the grantor’s children.

The difference is significant:

- The taxable gift in June 2010 when the AFR was 3.2% would be $408,934
- The taxable gift in September 2012 when the AFR was 1.0% would be $337,100

HOW LOW CAN THE APPLICABLE FEDERAL RATE GO?

The applicable federal rate (“AFR”) is published by the Internal Revenue Service every month. The AFR is needed to determine the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest. This calculation is important to find the value of a charitable deduction or transfer tax cost for a variety of charitable gifts, including the charitable gift annuity, the charitable remainder trust and charitable lead trust. Donors have the option to choose the AFR for the month of the gift, or either of the two prior months.

The AFR recently reached an all-time low: 1.0% in September 2012. A low AFR tends to lower the deduction for charitable split-interest gifts, but it also offers advantages in certain planning situations.
A LOW AFR ENHANCES CERTAIN GIVING ARRANGEMENTS

There are other ways of charitable giving besides the CLAT that attract more attention when the AFR significantly dips.

**Charitable Gift of a Remainder Interest in Personal Residence**

A donor can make a present gift of the remainder interest in a personal residence which qualifies for a charitable deduction despite the fact it is a gift of a partial interest. The donor can either retain the property for a term of years, or retain a lifetime interest—this flexible nature of the gift lends itself to becoming a part of overall planning. In valuing the remainder interest for charitable deduction purposes, the donor should select the lowest available AFR to maximize the charitable deduction.

**Charitable Gift Annuity**

A charitable gift annuity is part charitable gift and part annuity for the donor. Donors find the gift annuity to be versatile: both a gift to be deducted and a lifetime income to supplement retirement savings. When the AFR is low, the charitable deduction provided by the gift may be reduced, but a greater proportion of the annuity payment will be income-tax free to the annuitant.

Planning Your Personal Legacy

Estate planning (including wealth transfer) and charitable giving can intersect in meaningful and personal ways. Retirement assets can become a tax-efficient and highly valued gift. The non-grantor charitable lead annuity trust lowers federal transfer taxes by incorporating a series of annual charitable gifts before assets go to loved ones. Charitable giving isn’t an all or nothing proposition—a gift to Harvard Law School can enhance your planning and set an example for others.

Of course, periodic reviews of your estate plan will help you and your advisors keep your planning in tune with current tax laws, the economic environment, and your personal goals. There are innovative ways to build a personal legacy by helping both your loved ones and the institutions you esteem. If you are considering ways to support Harvard Law School, we invite you to contact us for more ideas. It would be a privilege to be a part of the process as you accomplish your personal legacy goals.

Charles B. Gordy II, J.D.
Director of Planned Giving
617-496-9265
cgordy@law.harvard.edu
Harvard Law School Alumni Center
125 Mount Auburn Street
Cambridge, Massachusetts 02138
FAX: 617-495-9684
Plannedgiving@law.harvard.edu

Visit us at: [www.law.harvard.edu/alumni/plannedgiving/](http://www.law.harvard.edu/alumni/plannedgiving/)

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