Creative Planning with Retirement Assets

Much of your accumulated wealth may be in some form of retirement plan — an employer’s pension or profit-sharing plan, an IRA, a Keogh plan if you are self-employed, or perhaps a salary deferral plan such as a 401(k) or 403(b) plan. All offer tremendous opportunities for growth because the funds in such a plan generally are not subject to income taxation until withdrawn. The downside comes (for all but Roth IRAs) when you or your heirs take distributions from your retirement account, and taxes have to be paid on retirement income.

In this issue of Making a Difference, we look at “hidden taxes” that can severely deplete your retirement accumulation. You also will see how smart gift planning to benefit Harvard Law School can help minimize your total tax burden.

Taxation of Your Retirement Assets: The Penalty of Success

Retirement plan assets are potentially exposed to a harsh, multi-pronged tax system: federal income taxes, federal estate taxes, state income taxes and state death taxes. Some people who fail to plan carefully may have these combined taxes consume as much as 70 percent of their retirement accumulation — certainly not what they expected after years of hard work and sacrifice.

Retirement plan assets that become part of an estate are classified as “income in respect of a decedent” (IRD) and require careful planning in order to realize tax-saving opportunities. For example, if you leave securities or real estate to an heir, the property is potentially subject to the federal estate tax — but not to the federal income tax. This contrasts with the treatment of IRD assets. These assets are “tax-cursed” because they are potentially subject to both the federal estate tax and the federal income tax.

Therefore, IRD items are not as attractive to your heirs as other types of property which carry no income tax consequences. However, if the recipient of the IRD item at your death is an income-tax exempt charitable organization like Harvard Law School, there is no income tax liability when the IRD item is received. In addition, the estate can deduct charitable bequests in computing federal and state death taxes.
The upshot is that it often makes sense to:

- fulfill family bequests with non-IRD assets that do not carry income tax burdens, and
- use IRD items, such as retirement plan assets and traditional IRAs, to make gifts to Harvard Law School upon your death. Such a gift could be an outright contribution or, if you would like a surviving heir to receive income, a gift to fund a Harvard-managed gift annuity or charitable remainder trust (see our July 2004 issue of Making a Difference for a full discussion of these trusts).

How to Learn More about Planning with Retirement Assets

By funding a generous gift with retirement plan assets, you can realize your philanthropic dreams at a far lower after-tax cost than might be possible otherwise, and still provide for your family. We welcome the opportunity to discuss your gift options, and encourage you to contact us directly by phone, e-mail, or by returning the enclosed reply card.

What will make the world better?

L. David ’68 and Carolyn Clark ’68

David and Carolyn Clark — both members of the Class of ’68 — can’t remember exactly when they made their first planned gift to Harvard Law School. “Probably in the first will that I wrote,” Carolyn muses, “there was a bequest to the Law School.”

The Clarks admit that they had a special reason to remember the School with affection: they met there in the fall of 1966, when an accident of the alphabet (Clark, Cochran) happened to place them next to each other in Professor Robert Braucher’s Commercial Transactions class. “We did meet some great people there,” Carolyn recalls with a smile, “including each other.”

Carolyn adds that she benefited directly from the generosity of those who had gone before her at the School: “Without the scholarships and loans I received from the Law School, I never could have gone there. So I was very, very grateful.”

Since graduating from HLS, both David and Carolyn have become experts in planned giving — David as a trusts and estates attorney at Salans, and Carolyn as a charitable-giving advisor (and the first female partner) at Milbank, Tweed, Hadley, & McCloy — and have helped both their respective clients and their Law School classmates think through planned gifts.

For her part, Carolyn stresses the joy she has experienced in helping generous people create great institutions in New York. “It’s a wonderful field of law,” she says, “because you see the best of everyone. You talk to people about the good they want to do. What things do they want to cure? What will make the world better?”

David first became intrigued by the power of planned gifts during the summer of 1966, when he worked in Harris Beach & Wilcox’s Rochester, New York office. Based on that experience and his subsequent years in New York City, he has developed some strong ideas about how to structure planned gifts.

In their roles as experts in planned giving, both David and Carolyn have experienced first-hand the benefit of using retirement plans as charitable assets. “For those individuals who want to establish a charitable bequest, retirement assets can be a great choice. Doing so can remove a highly taxable asset from one’s estate, while at the same time making an important impact for a place like Harvard Law School.”
The Oliver Wendell Holmes Society was developed to recognize and thank those individuals who have included Harvard Law School in their estate plans or who have established a planned gift for the Law School, such as a charitable remainder trust, charitable gift annuity, or pooled income fund. As of December 31, 2005, the Oliver Wendell Holmes Society proudly boasted over 700 members. Below is a listing of those new members since January 1, 2005.

On December 6, 2005, L. David '68 and Carolyn Clark '68 hosted 39 members of the Oliver Wendell Holmes Society at a luncheon at the University Club in New York City. Jennifer Pline, Vice President of Trusts at Harvard Management Company, served as the luncheon's keynote speaker. In addition, Holmes members in other cities like Chicago and Palm Beach, FL were invited (free of charge) to Harvard Law School Association gatherings over the last several months, with additional events planned for 2006 and beyond.

To learn more about the Oliver Wendell Holmes Society or to find out if you are a member, please contact our office at 617-495-9891.
Supplement Your Retirement Income with a Deferred Gift Annuity

A Deferred Gift Annuity (DGA) is an excellent tool to supplement retirement income and contribute to a comfortable living well into the future. A key feature of the Harvard-managed DGA is that it provides an income tax charitable deduction now, and fixed payments to you later from Harvard. The DGA is an especially good idea for individuals who want to save more than they can in their retirement plans due to annual contribution limits. There is no limit to the amount of money that can be contributed to a DGA, although the minimum amount for an initial contribution is $25,000. You choose when the payments begin — usually some time in your retirement when you would like an additional stream of income. Even better, since the gift annuity is deferred, the payments and charitable deduction are greater than for the regular (immediate) gift annuity. Ask us about this attractive opportunity.

Are Lifetime Gifts of Retirement Assets Possible?

A testamentary gift of retirement assets to Harvard can make a lot of sense. But, we are often asked about the possibility to make a gift of retirement accounts during one's lifetime. Unfortunately, a tax-free transfer or “rollover” of retirement plan assets directly to charity while living is not possible under current law. Instead, a donor must take a taxable distribution from a retirement account and make a contribution to Harvard in order to be entitled to a deduction that can be applied against that income.

However, the prospects for change in the tax law is very good. In current legislation pending before Congress, a charitable rollover provision would allow a taxpayer to directly gift the retirement account without having to realize the income from that account for tax purposes. The philanthropic community is waiting to see if the new legislation will ultimately include this tax-free way to give to Harvard Law School during one's lifetime, and we will update all of our friends and alumni if/when this legislation takes effect.

For more information about gifts of retirement plan assets, or how a planned gift might benefit you, please return the enclosed reply card or contact:

John C. MacRae, Director
Carol A. Giusti-Cahalane, Associate Director
Office of Planned Giving
Harvard Law School Alumni Center
125 Mt. Auburn Street
Cambridge, Massachusetts 02138
617-495-9891
Fax: 617-495-9684
jmacrae@law.harvard.edu
cagc@law.harvard.edu

This publication is designed to provide accurate information in regard to the subject matter covered. It is sent out with the understanding that neither the publisher nor any distributor is engaged in rendering legal, accounting, investment or other professional services. If such services are required, the advice of competent professionals should be sought.