Gift planning is generally quite simple for clients who contribute cash or appreciated securities. Gifts of tangible personal property, while subject to the same substantiation rules, may require more planning to assure clients receive the maximum charitable deduction. Some special considerations apply to gifts of tangible personal property, such as:

Valuation – Noncash gifts in excess of $500 must be reported on Form 8283, and if the charitable deduction claimed exceeds $5,000, a qualified appraisal is required, except for gifts of marketable securities. The ap-

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Investing in the Core Greatness of Berkeley

As Berkeley’s Sesquicentennial approaches, Chancellor Carol T. Christ looks forward with renewed vision to strengthening the core of what makes Berkeley great – its world-class faculty and its brilliant students. The Chancellor's Impact Fund is a 12-month philanthropic effort with a goal of raising $15 million in discretionary, current-use funds that will provide Chancellor Christ with the flexibility to address Berkeley’s highest priorities. Examples of possible impacts could include: expanding the number of tenure-track faculty positions; retaining current faculty; increasing graduate student fellowships; and providing enhanced research opportunities for all students. Chancellor's Impact Fund benefactors understand the far-reaching benefits of investing in Berkeley's young faculty. Gifts at the $150,000 level and above will become part of a special circle of donors who meet regularly throughout the year with the Chancellor. If you have clients interested in supporting the Chancellor's Impact Fund, please contact our office at ogp@berkeley.edu or 510.642.6300. Fiat Lux!
Tax Planning for Gifts of Unusual Assets (continued from page 1)

praisal must be made no earlier than 60 days prior to the date of the gift and no later than the due date (including extensions) of the tax return on which the deduction is claimed and must be made by a qualified appraiser as defined in Code §170(f)(11)(E). Certain works of art are subject to review by the IRS’s Art Advisory Panel.

Deductions – If the gift is ordinary income property (e.g., art in the hands of the artist), the deduction is limited to the donor’s basis. Corporate donors also can make gifts of tangible property, for which a deduction of up to 10% of taxable income, with a five-year carryover, is allowed.

Special deduction limits – There are enhanced deductions for companies (other than S corporations) that contribute inventory items “for the care of the ill, needy or infants” under Code §170(e)(3)(A)-(B) or make gifts of research equipment to colleges, universities, and tax-exempt scientific research organizations under Code §170(e)(4).

Unrelated use – The deduction for a gift of tangible personal property that is “unrelated” to the charity’s exempt purposes is limited to the lesser of the donor’s basis or fair market value. If the donor is required to file the appraisal portion of Form 8283, the charity must file Form 8282 (tattletale form) if the property is sold within three years of the gift.

Because of the special rules that apply to these types of gifts, clients should discuss with the charity how the property will be used in advance of making a contribution.

UC Berkeley Planning Pointer:
Fund a Berner Match with IRA QCDs

The Raymond H. Berner Scholarship Matching Program could be the perfect opportunity for your clients to make an impact at Cal by making a tax-savvy charitable gift using IRA qualified charitable distributions (QCDs). They can establish named scholarships at Cal while keeping IRA distributions out of their adjusted gross incomes.

The Berner Matching Program provides a match of $100,000 for new endowed scholarships created with a gift of $100,000 or more. This is an instant 100% return on their gift! Your client could establish a named scholarship, accessing a Berner match, with one or more IRA QCDs, and could continue to add to the scholarship in the same way for years to come. (The match is available one time only.)

As you know, the key requirements of the provision remain as they have been since 2006:

• the IRA account holder must be at least age 70½ at the time the distribution is made to the qualified charity;
• the distribution must be made directly from the IRA custodian to the charity;
• the gift cannot exceed $100,000 per donor per year; and
• no goods or services can be received by the donor in exchange for the IRA gift.

If your client is interested in focusing a scholarship on a specific academic discipline, a minimum gift of at least $150,000 would be required. Though this is greater than the $100,000 annual per donor limit on IRA QCD gifts, your client could direct IRA QCDs to Cal over more than one year to fund this type of scholarship.

Please contact us at 510.642.6300 if your client would like to explore this tax-wise giving option.
Employee Stock Options and Charitable Giving

Non-qualified stock options, given to benefit and retain employees, can in certain circumstances be an ideal asset to give to charity because donors are not required to part with cash or make other out-of-pocket transfers. Employees generally are not taxed on the value of stock options when granted. When exercised, however, the employee is subject to tax at ordinary income rates on the difference between the fair market value of the stock and the exercise price [Code §83(a)]. This means great care must be taken in making a charitable gift of non-qualified stock options during the employee’s life.

What are the tax consequences of giving a charity a non-qualified stock option? Because the donor will continue to be subject to tax when the options are exercised, it is best to make the gift subject to a condition, such as requiring the donor’s approval for a sale (Letter Rulings 9737015, 9737016). The gift of the option will be incomplete and no deduction will be available. When the options are exercised, the gift is complete and the donor will be entitled to a charitable deduction to offset the income required to be recognized. The donor can achieve the same result by exercising the options, selling the stock and contributing the proceeds to charity.

From a tax standpoint, the best use of stock options for charitable giving is to leave them to charity at death. Stock options owned by an employee at death are included in the gross estate and are considered income in respect of a decedent (IRD) in the hands of the heirs. As with other types of IRD assets such as retirement plans and U.S. savings bonds, if stock options are left to charity at death, the estate is entitled to a charitable deduction and the charity pays no tax on the IRD.

It’s the Charitable Lead Trust’s Time to Shine

The §7520 rate, used to calculate the charitable deduction for split-interest gifts such as charitable lead trusts, charitable remainder trusts, charitable gift annuities and remainder interests in homes and farms, has been hovering between 2.2% and 2.6% in 2017. That’s up slightly over 2016, but it’s still low enough to make charitable lead trusts attractive. Lower §7520 rates produce higher charitable deductions. For example, the deduction for a $2 million charitable lead annuity trust that is to pay charity 3% annually for ten years is $533,358 at a 2.2% §7520 rate. If the §7520 rate were 4%, the deduction drops to $486,654.

With a charitable lead trust, payments are made to charity, usually for a term of years, with trust assets then reverting to the donor (a grantor trust) or, more commonly, passing to family members (a non-grantor trust). The value of the charitable income interest can be adjusted by altering the amount paid to charity annually and/or changing the number of years the trust will last. For donors with estates subject to estate tax, it’s possible to zero out the cost of passing valuable assets to the next generation. Lead trusts are not tax-exempt, so the sale of assets within a lead trust does not avoid capital gains tax.

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No Deduction for Incomplete Gift

Grou Development LLC purchased the St. George Theatre in 2001 for $700,000. When plans to demolish the dilapidated building met with community resistance, Grou sought to donate the structure to a nonprofit. A newly formed organization, Richmond Dance Ensemble, was interested in acquiring the building, but because it hadn’t yet been granted charitable status, Grou instead contributed the building to WEMGO Charitable Trust, with the stipulation that the Trust was prohibited from selling the building for five years, except to Richmond Dance. Grou received $470,000 for the transfer in 2004.

Just prior to the transfer, the building was appraised at $5 million. George Fakiris, managing partner of Grou, reported a $3 million noncash charitable deduction on his 2004 personal return for his 60% interest in Grou. Part of the deduction was carried over to later tax years. The IRS issued a deficiency for years 2006 through 2008, saying Grou’s transfer of the St. George Theatre to WEMGO was not a completed gift because Grou “retained dominion and control” over the building following the transfer. The sales contract allowed Grou to take back the theater and transfer it to Richmond Dance after the purported transfer, said the IRS. The Tax Court agreed, noting that in the five-year period following the sale, WEMGO was prohibited from selling the building and Grou retained the right to transfer the theater to Richmond Dance once it received its tax-exempt status from the IRS. The court held that Grou’s right to direct the transfer of the property to Richmond Dance under the contract rendered the gift “conditional,” and because the possibility that the condition would be satisfied was not so remote as to be negligible, no gift was made within the meaning of Code $170(a)(1). (Fakiris v. Commissioner, T.C. Memo. 2017-126).

It’s the Charitable Lead Trust’s . . . (continued from page 3)

In a non-grantor inter vivos lead trust, the donor receives a gift tax charitable deduction for the value of the charity’s interest, but no income tax deduction. Income tax savings occur indirectly because the donor is no longer taxed on the income produced by the gift assets. With a grantor trust, the donor is treated as the owner of the lead trust under the grantor trust rules [Code §§671–677]. Donors receive both gift tax and income tax charitable deductions, but will be taxed on all trust income, even amounts paid to charities.

Clients who prefer arrangements that are wholly revocable during life may prefer the testamentary charitable lead trust. An estate tax charitable deduction is available for the present value of the charitable income interest, although it is impossible to know what $7520 rate will apply at death. There is no tax on the income paid to charity, but excess income is taxed at trust tax rates, unless the excess is also paid to charity.