The IRS reported that in 2015, 11,917 estate tax returns were filed for decedents dying in 2014 and 2015. Only 4,918 of these returns involved taxable estates. California accounted for 2,193 returns – the most of any state – with a total gross value of $33.24 billion – also the most of any state. There were 370 California estates on which charitable deductions were claimed, totaling nearly $3.75 billion.

Other facts, statistics and survey results about philanthropy:

• There are more than 269,000 donor advised fund accounts in the U.S., with assets totaling more than $78 billion, according to the National Philanthropic Trust’s 2016 Donor Advised Fund Report. The average fund account was $235,727.

•Giving USA 2016, a publication by Giving USA Foundation, estimates that $373.25 billion was contributed to charities in 2015 – an inflation-adjusted increase of 4%. Individual donors represent the largest portion, with $264.58 billion (82%).

• In 2015, 91% of high net worth households (net worth of at least $1 million and/or annual household income of at least $200,000) contributed to charity, versus 58.8% for the general population, according to U.S. Trust’s 2016 Study of High Net Worth Philanthropy.

The Berkeley Brain Initiative Unlocks Understanding of How the Brain Gives Rise to the Mind

The Berkeley Brain Initiative brings together exceptional faculty from multiple disciplines across the university to examine how the human brain gives rise to the mind. So much is at stake: from new approaches to how we educate children to treating neurological and psychiatric diseases, inspiring creativity, and innovating to benefit society.

To advance this vision, Berkeley has launched a comprehensive effort to secure resources necessary to invest in top faculty and graduate students via endowed chairs and fellowships, building a new facility for collaborative discovery, inspiring bold ideas by seeding multidisciplinary research teams, and securing the most cutting-edge research technology. If you have a client who may be interested in supporting brain and mind research at Berkeley, please call our Strategic Initiatives office at 510.664.7655 for opportunities to get involved at all levels.
Crystal Ball Gazing at Taxes

It's too early to know exactly how income taxes may change in 2017, but there are a few similarities in tax reform proposals put forth by President Trump and House Republicans. Both call for income tax rates to be compressed from the current seven (10%, 15%, 25%, 28%, 33%, 35% and 39.6%) to three (12%, 25% and 33%). Both proposals also call for changes to itemized deductions. President Trump's plan would boost the standard deduction from the current $12,700 for married couples and $6,350 for single taxpayers, to $30,000 and $15,000 respectively. It is estimated that would reduce the percentage of taxpayers who itemize deductions from 30% to 5%. In addition, itemized deductions would be capped at $200,000 for married couples and $100,000 for single taxpayers. Under the House plan, all itemized deductions except mortgage interest and charitable contributions would be eliminated. Taxpayers could choose between claiming these two or opting for a larger standard deduction that includes personal exemptions and other family benefits.

What are some options philanthropic clients should consider if itemized deductions are scaled back?

- **Fund a nongrantor charitable lead trust** – Donors can transfer income-producing investments to a trust that makes fixed or variable payments to qualified organizations for several years and later transfers all assets to family members. The trust diverts taxable portfolio income away from the donor and may save transfer taxes, as well.
- **Give appreciated securities** – With the markets at all-time highs, clients with highly appreciated securities may want to consider a gift of those securities now. Doing so could lock in a higher deduction if subsequently the market cools off and/or we see a cap on itemized deductions. (Note, however, it is not known whether any 2017 income tax law changes will be prospective or retroactive to the beginning of this year.)
- **Make interest-free loans** – Clients can lend cash to charity (up to $250,000 per organization) and no interest will be imputed to the client [Temp. Reg. §1.7872-5T(9)]. Loans can later become permanent gifts if donors forgive them during life or at death.
- **Make qualified charitable distributions (QCDs)** – IRA owners age 70½ and older can arrange QCDs that count as part or all of their required minimum distributions, up to $100,000 annually. Donors’ taxable incomes go down without resort to charitable deductions.

UC Berkeley Planning Pointer:

**Tell Us How We Can Help**

Gifts to the University of California, Berkeley do not have to be all-or-nothing. We welcome the opportunity to work with advisors and their clients to craft gifts that meet clients’ individualized planning goals. For example, Berkeley recently worked with an advisor whose client owned an interest in rental property. The client currently uses a portion of the rental income to provide financial assistance to her sister. The donor would like to support Berkeley by making a testamentary gift of the property interest on two conditions: Berkeley will create a charitable gift annuity for the benefit of the sister once it receives the property interest, and Berkeley agrees to retain the interest until the other two co-owners are ready to sell. The client does not want Berkeley to sell the interest to a third-party or force the remaining two owners to buy the client’s share. We were able to successfully complete this gift arrangement with all parties satisfied.

Charitable gifts can be used to meet a variety of planning challenges for clients facing capital gains on the sale of assets, seeking to shift income to retirement years, or wanting to provide income to family members or friends.
Charitable Gifts: They’re Not Just for Individuals

Estates and trusts are entitled to claim deductions for charitable transfers or amounts permanently set aside for charitable purposes. Unlike deductions by individuals, which are governed by Code §170, deductions by estates and trusts fall under Code §642(c)(1). In general, an unlimited deduction is allowed in computing taxable income for any amount of gross income which, pursuant to the governing instrument, is paid or permanently set aside for religious, charitable, scientific, literary or educational purposes.

Permanently set aside

In order for an amount to be considered “permanently set aside,” the possibility that it will pass to non-charitable beneficiaries must be “so remote as to be negligible” [Reg. 1.642(c)-2(d)]. The Tax Court denied an estate’s $315,000 deduction for the residue that was supposed to pass to the decedent’s church. The court agreed with the IRS that because the estate was in the midst of a legal challenge and no amount had been set aside in a segregated account, the church’s share might be reduced (Estate of Dimarco v. Commissioner, T.C. Memo. 2015-184). The court reached the same conclusion, even where an estate argued that the litigation expenses in a will challenge were not “reasonably foreseeable.” The court said that, at the time the estate tax return was filed, there was a real possibility that funds would be “depleted during the pendency of the lawsuit” (Estate of Belmont v. Commissioner, 144 T.C. No. 6).

Pursuant to the terms of the governing instrument

Several individuals were receiving modest monthly amounts for life from a testamentary trust that was then to distribute the assets to charity. The IRS disallowed a charitable deduction for gifts to charity prior to the death of the last annuitant. The Tax Court acknowledged that the payments were made for charitable purposes, but the governing instrument – the will – did not authorize charitable distributions during the lifetimes of the annuitants. Therefore, no charitable deduction was allowed (Hubbell Trust v. Commissioner, T.C. Summ. Op. 2016-67). In a recently issued Chief Counsel Advice (CCA 201651013), the IRS said that a trust modified by state court order was not entitled to deductions for transfers to private foundations. The purpose of the court order was to obtain “economic benefits,” said the court, not to resolve a bona fide conflict. Payments to the foundations were not considered made pursuant to the governing instrument.
Convert Savings Bonds to a Lifetime Income

The Treasury Department reports that billions of dollars in U.S. savings bonds have reached maturity and no longer earn interest. Cashing the bonds generally results in taxation on the built-up interest, but there is a way to convert bonds to a stream of income with little or no tax.

Savings bonds cannot be transferred to charity during life, under Treasury regulations. To use the bonds in a gift arrangement, the owner must redeem the bonds and give charity the proceeds. The owner will report all the bond interest on his or her income tax return. However, if the proceeds are then given in exchange for a charitable gift annuity, the owner will be entitled to a charitable deduction that may significantly reduce or even eliminate any tax owed on the interest.

For example, a donor, age 74, owns $25,000 of bonds, with untaxed income of about $12,000. If the donor uses the $25,000 to establish a charitable gift annuity, he or she will receive payments of $1,425 (5.7%) annually, $1,049 of which will be tax-free for the donor's life expectancy.

The balance is taxed as ordinary income. In addition, the donor will be entitled to an income tax charitable deduction of $11,256, assuming quarterly payments and the use of February 2017's §7520 rate of 2.6%. The deduction helps offset the interest income.

It's also possible to leave savings bonds to charity in an estate, directing that a charitable gift annuity be paid to a named beneficiary. If the annuitant is younger than the charity's minimum age for a charitable gift annuity, a deferred payment gift annuity can be arranged.

Charitable Options: Contingent Designations and Disclaimers

Many people are hesitant to name a charity in a will, living trust, or beneficiary designation because of their concern about providing for family members. Naming charity as a contingent beneficiary or giving heirs the right to disclaim — in whole or in part — in favor of a named charity can address that concern. Amounts passing to charity as the result of either a disclaimer or contingency are considered to have passed from the decedent and will qualify for the estate tax charitable deduction [Reg. §20.2055-1(a)].

With a contingency, assets pass to charity only in the event that the named beneficiary has predeceased the testator.

A qualified disclaimer, on the other hand, gives the beneficiary the right to decline the bequest [Code §2518(b)]. In general, if a beneficiary executes a disclaimer, the bequest passes to the residue of the estate. However, the estate document can provide that in the event of a disclaimer, assets are to pass instead to a named charity. To qualify, a disclaimer must be an irrevocable and unqualified refusal to accept an interest in property. The disclaimer must be in writing and received by the executor within nine months of the decedent's death. Further, the person making the disclaimer cannot have accepted the interest or any of its benefits. Finally, as a result of the disclaimer, the interest must pass to someone else, without any direction on the part of the person disclaiming.

Two cautions:

• Except for a surviving spouse, an individual cannot make a valid disclaimer of IRA benefits into a charitable remainder trust if that person will be a beneficiary of the trust [Rev. §25.2518-2(e)(3)].

• Disclaimers of assets to a private foundation will not have the desired tax results if the person disclaiming is a director of the private foundation.