



FEATURE: PHILANTHROPY

Comparing the Options

Charitable LLC versus other vehicles

	Complexity/ Cost to Establish	Continued Control	Reserved Benefit For Non-Charitable Beneficiaries	Halo Effect?	Minimum Distribution Requirements	Limitation on Tax Deduction for Gifts Made to the Entity	Other Tax/ Reporting Considerations
Charitable Limited Liability Company (LLC)	Moderate	Donor retains complete control	The donor can unwind the structure at any time	Maybe	None	No tax deduction on funding of LLC, but there are limitations on subsequent gifts from LLC to charity (see below)	No tax deduction on funding of LLC, but deductions are available for subsequent gifts from LLC to charity Losses can be written off against donor's other income ¹
Outright Gift	Fast and simple	None	None	Yes	N/A	50 percent of adjusted gross income (AGI) if made to a public charity ²	Generally eligible for an immediate deduction
Split-Interest Trusts (Charitable Remainder Trusts (CRTs) and Charitable Lead Trusts (CLTs))³	Fairly complex	Potentially yes, to some extent ⁴ But take care to ensure that powers given to the grantor don't inadvertently cause the trust to be a "grantor trust" for income tax purposes under Internal Revenue Code Sections 671-677 or cause the assets to be includible in the grantor's estate for estate tax purposes In addition, care must be taken to curtail a grantor's powers in connection with determining the value of hard-to-value assets for unitrusts ⁵	Yes	Partial	Amount of payment will directly impact amount of charitable deduction For CRTs, at least 5 percent per year payout is required (with the possibility of deferral if set up as a net income charitable remainder unitrust or a net income makeup charitable remainder unitrust ⁶)	Determined by the ultimate charitable destination of the funds	CRT: Upfront income tax deduction for contribution Sale of appreciated assets within CRT doesn't incur capital gains, because CRTs aren't generally subject to tax ⁷ CLT: Either upfront charitable deduction, with future income taxable to grantor, or no upfront charitable deduction, but charitable deduction on future income ⁸
Donor-Advised Funds (DAFs)	Relatively simple	Yes (although only in a non-binding advisory capacity)	No	May be limited	None	Generally 50 percent of AGI ⁹	DAFs are exempt from income tax ¹⁰ Eligible for upfront charitable deduction ¹¹



Comparing the Options

(continued)

	Complexity/ Cost to Establish	Continued Control	Reserved Benefit For Non-Charitable Beneficiaries	Halo Effect?	Minimum Distribution Requirements	Limitation on Tax Deduction For Gifts Made To the Entity	Other Tax/ Reporting Considerations
Private Foundation (Grant Making)¹²	Complex	Subject to Internal Revenue Service restrictions (be especially wary of self-dealing rules ¹³)	No	Yes	5 percent per year, regardless of income ¹⁴	30 percent of AGI ¹⁵	Foundation pays no regular income tax ¹⁶ Gifts of appreciated property (other than qualified appreciated stock) valued at donor's tax basis, not fair market value (FMV) ¹⁷ Strict limitations on investments in for-profit companies and political activities ¹⁸ Additional ongoing reporting requirements ¹⁹
Private Foundation (Operating)²⁰	Complex	Subject to IRS restrictions (be especially wary of self-dealing rules ²¹) IRS regulations may discourage broad conception of private foundation's mission ²²	No	Yes	Required to pay out substantially all of its income ²³	50 percent of AGI ²⁴	Foundation pays no regular income tax ²⁵ Gifts of appreciated property valued at FMV, not donor's tax basis ²⁶ Strict limitations on investments in for-profit companies and political activities ²⁷ Additional ongoing reporting requirements ²⁸

Endnotes

1. See, e.g., 26 C.F.R. Section 1.172-3(a)(2).
2. 26 U.S.C. Section 170(b).
3. For charitable remainder trusts, see 26 U.S.C. Section 664. Charitable lead trusts are indirectly addressed in the Internal Revenue Code; see 26 U.S.C. Sections 170, 2055, 2522 and the regulations thereunder.
4. See, e.g., Private Letter Ruling 7730015 (April 26, 1977).
5. See H.R. Rep. No. 91-413, pt. 1, at 60 (1969), reprinted in 1969 U.S.C.C.A.N. 1645, 1706.
6. 26 U.S.C. Section 664(d)(2)-(3).
7. 26 U.S.C. Section 664(c)(1).
8. See Revenue Procedure 2008-45.
9. 26 U.S.C. Section 170(b) (donor-advised funds are generally treated as public charities; see Internal Revenue Manual Section 7.20.8.1.3).
10. 26 U.S.C. Sections 170(c), 4966(d).
11. *Ibid.*
12. 26 U.S.C. Section 4942 (grant making foundations aren't named as such, but consist of any foundations that aren't operating foundations).
13. See 26 U.S.C. Section 4941.
14. 26 U.S.C. Section 4942.
15. 26 U.S.C. Section 170(b).
16. 26 U.S.C. Section 501(c)(3).
17. See 26 U.S.C. Section 170(e)(1)(B)(ii), 26 C.F.R. Section 1.170A-1(c)(1).
18. For restrictions and taxes on investments by charities, see, for example, 26 U.S.C. Sections 4940, 4943, 4944. For restrictions on the political activities of charitable organizations, see 26 C.F.R. 1.501(c)(3)-1 and Rev. Rul. 2007-41.
19. 26 U.S.C. Section 6033.
20. 26 U.S.C. Section 4942(j)(3).
21. See 26 U.S.C. Section 4941.
22. For example, 26 U.S.C. Section 4942(j)(3)(B)(i), the private operating foundation "assets test," requires a private operating foundation to devote "substantially more than half" of its assets (meaning 65 percent or more, according to 26 C.F.R. 53.4942(b)-2(a)(5)) to its charitable activities or functionally related businesses. In practice, this may cause those who create or run private operating foundations to define their own activities rather more narrowly than they otherwise would, for fear of running afoul of these rules.
23. 26 U.S.C. Section 4942(j)(3)(A).
24. 26 U.S.C. Section 170(b).
25. 26 U.S.C. Section 501(c)(3).
26. 26 U.S.C. Section 170(e)(1)(B)(ii).
27. See *supra* note 18.
28. 26 U.S.C. Section 6033.

— Daniel Dykes & Michael S. Schwartz