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# Using Charitable Trusts to Transfer Business Assets





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## What are charitable remainder and charitable lead trusts?

Charitable remainder and charitable lead trusts are special types of trusts into which you transfer assets, retain either a present or future economic benefit for yourself or your family, and provide for a present or future transfer to a charitable entity. The transfer into either one of these types of trusts will qualify for income, estate, and gift tax charitable deductions. A charitable remainder or a charitable lead trust can be an excellent vehicle into which to transfer the closely held stock of your business.

### **Charitable remainder trust**

There are two broad types of charitable trusts: the charitable remainder trust and the charitable lead trust. With a charitable remainder trust, you transfer your closely held stock in your business into a charitable remainder trust, retain the right to receive payments from the trust for a period of years (usually your life span), and then have the assets pass to a named charitable entity at the end of the payment period (usually at your death). You can take an income tax deduction in the year of the transfer into the charitable remainder trust, and the assets in the trust will not be included in your taxable estate (or will generally qualify for an estate tax charitable deduction if they are included in your estate). The income tax deduction is equal to the remainder interest of the trust.

There are three types of charitable remainder trusts: a charitable remainder annuity trust (CRAT), a charitable remainder unitrust (CRUT), and a pooled income trust.

### **Charitable lead trust**

A charitable lead trust works almost the opposite of a charitable remainder trust. You transfer your closely held stock into a charitable lead trust, the charitable entity receives the right to receive payments for a period of years, and then the assets in the trust pass to you or to your designated beneficiaries at the end of the payment period. Typically, there is no income tax deduction for a charitable lead trust, but there may be substantial estate tax savings at your death. A charitable lead trust can be set up as a charitable lead annuity trust (CLAT) or a charitable lead unitrust (CLUT).

### **Charitable trusts not frequently used with closely held businesses**

It is not that common that an individual will transfer stock of a closely held business into a charitable remainder or charitable lead trust. One of the problems is that if the business does not pay a dividend on the closely held stock (and it often will not), then the charity will not have the income to pay the annuity or unitrust interest. Furthermore, the charity may not be able to sell the stock in the closely held business on the open market. There simply may not be a buyer for this type of stock (and you may not want a stranger owning your company anyway). One sophisticated technique that some estate planners use, though, is to have the charity sell the stock back to the company and then invest the proceeds in income-producing assets.

## Why use a charitable remainder trust?

### **Can provide you with income for life and give you income and estate tax deductions**

A charitable remainder trust (whether a CRAT, CRUT, or pooled income trust) can give you a substantial income for the rest of your life, allow you to make an income tax deduction in the year of the transfer, and remove those assets from your taxable estate. There is a complicated formula to determine the amount of the income tax deduction. Your attorney or accountant can calculate it for you.

**Example(s):** You transfer stock (worth \$1 million) in your closely held business to a charitable remainder annuity trust. The charity sells the stock and reinvests the proceeds in income-producing assets. You retain an income stream of \$50,000 per year until you die. Based on these numbers, your accountant determines that you can take a \$425,000 income tax deduction in the year of the transfer. When you die, the assets in the CRAT will not be included in your taxable estate. By transferring your closely held stock into a charitable trust, you have given yourself a substantial income for the rest of your life, received a large income tax deduction, and effectively removed all the assets from your taxable estate. (Of course, you will not have these assets to leave to your beneficiaries.)



## ***CRUT may be advantageous for individuals who need an increase in income***

A charitable remainder unitrust (as opposed to a charitable remainder annuity trust) has the potential to provide you with a boost in income over the period of your income interest. With a CRUT, the income interest is a percentage of the assets in the charitable remainder trust. The assets have to be revalued each year. If the assets increase in value over time, then your income will increase over that same period. (However, if the assets decrease in value, then your income will decrease.) With a charitable remainder annuity trust, you receive a set amount of income each year from the trust. This figure will not increase or decrease. Therefore, if you are concerned about maintaining your standard of living during an inflationary period (and you are confident that the assets in the trust will increase in value), you should set up the charitable remainder trust as a unitrust.

**Example(s):** You transfer your closely held stock (worth \$500,000) to a CRUT and retain a 7 percent unitrust interest. The first year, the trust pays you \$35,000, which is taxed as ordinary income. By the third year, the assets in the CRUT have increased in value to \$700,000. Now, the trust will pay you \$49,000. Of course, there will also be a substantial income tax deduction in the first year of the trust, and the assets will effectively be removed from your taxable estate.

## **Why use a charitable lead trust?**

### ***Charitable lead trust allows you to transfer assets to heirs at very low estate tax costs***

You may want to use a charitable lead trust when you would like to make a series of gifts to a charitable entity and you would then like to leave a large amount of assets to your heirs at a reduced estate or gift tax cost. With a charitable lead trust, you transfer your stock in your closely held business into the trust. The charity then retains either an annuity or unitrust interest in the trust for a period of years. At the end of the term, the assets in the trust revert to you or pass to one of your designated beneficiaries. There is a gift or estate tax deduction available for the value of the charity's interest. A charitable lead trust can therefore be a very effective way to pass assets to the next generation for a reduced gift or estate tax cost. Of course, you must be willing to give up the income from those assets in the meantime.

**Example(s):** You transfer \$1 million in closely held stock into a charitable lead trust. Your designated charity receives a \$50,000 per year annuity payment from the trust. The income period is scheduled to last 20 years. At the end of the 20-year period, you designate that the assets in the trust should pass to your three children. Your accountant calculates that the present value of the charitable interest at the time of the gift is \$900,000, and that the taxable gift of the remainder interest for your children is \$100,000. Thus, assuming that the trust assets appreciate in value, you can pass almost the entire amount of the assets in the trust to your children for a very small gift tax cost.

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