

The Supporting Organization Advantage

By Jill S. Dodd, Esq.

A supporting organization is a charitable entity created by donors in partnership with a public charity such as a community foundation. The supporting organization is subject to none of the private foundation restrictions or excise taxes, and donations to it are as fully tax-advantaged as donations to public charities. Directors appointed by the public charity work with donor directors to implement the donor's philanthropic vision. The availability of the staff of the public charity to manage the supporting organization and to provide guidance on charitable giving allows the donors to focus on their philanthropic goals and helps ensure that succeeding generations of the donor's family will be involved in charitable giving.

INTRODUCTION

Supporting organizations have become popular charitable giving vehicles. A supporting foundation is a separate charitable organization which is a hybrid in the tax world. Like a private foundation, it is typically funded by one family; however, it is subject to none of the onerous operating restrictions and excise taxes imposed upon private foundations by the Internal Revenue Code ("the Code"). The restrictions imposed by the Code upon private foundations are meant as a substitute for the public oversight to which publicly supported foundations (such as community foundations) are subject. The supporting organization is free of such restrictions because, instead, it is subject to the oversight and control of one or more public charities chosen by the donor.

PRIVATE FOUNDATION RESTRICTIONS

All charities must act solely in a manner that will further their charitable purpose, and will not

cause impermissible private benefit to accrue to any individual. Private foundations are subjected to the following additional restrictions:

- Must pay a 2% excise tax on their net investment income
- May not engage in self-dealing, meaning that private foundations may not transact business with their donors, family members of their donors, or entities in which their donors (or family members) have a 35% or greater ownership interest
- Must distribute at least 5% of their net asset value every year to qualified charities
- May not hold more than a 20% interest in any one company
- May not make grants to individuals (with limited exceptions) without a grant-making program which has been pre-approved by the IRS

Excise taxes will be imposed on private foundations which fail to meet any of the above requirements.

INCOME TAX ADVANTAGES

The income tax deduction available for contributions to private foundations is less favorable than that available for contributions to supporting organizations. For example, the deduction for a contribution of appreciated, publicly traded stock to a private foundation is limited to 20% of the donor's adjusted gross income ("AGI") in any one year, but a like contribution to a supporting organization can be deducted from up to 30% of the donor's AGI for any given year. The deduction for contributions of closely held stock to a private foundation is limited to basis, while the deduction for the same



contribution to a supporting organization will equal the stock's full fair market value. Thus, a private foundation is generally not the appropriate vehicle for funding with closely held stock.

CONTROL BY PUBLIC CHARITIES

The price exacted by the Code for freedom from private foundation restrictions and a greater charitable deduction is that a supporting organization must be (1) operated for the benefit of, and (2) controlled by, one or more public charities. To be operated for the benefit of a public charity means that the grants distributed to other charities must fulfill the charitable purposes of the supported public charity. For this reason, community foundations and other public charities with broad charitable purposes are the most popular supported organizations. The supporting organization of a community foundation may make grants to a wide variety of charities, constrained only by the donor's philanthropic interests. Most supporting organizations establish the requisite control by providing in their bylaws that a majority of the organization's board will be appointed by the supported public charity (the "Public Directors"), while a minority will be appointed by the donors (the "Donor

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Directors"). Public charities typically work with donors to find Public Directors who are compatible with, and often known by, the donors.

The Public Directors typically see their role as twofold: first, to make certain that the supporting organization's activities are consistent with applicable law (this obligation is shared by the Donor Directors); and second, to implement the donor's philanthropic objectives.

NON-TAX ADVANTAGES

A supporting organization is more than a "non-private foundation." It offers advantages to donors well in excess of the freedom from the private foundation restrictions described above. Specifically, supporting organizations free the donor and his family from the substantial administrative burdens of managing a charity, so that they may concentrate their efforts on their philanthropic

objectives. Further, the expertise of the staff of an organization such as a community foundation is available to the donor who may be looking for guidance on appropriate grant recipients. Finally, the supporting organization is the optimum organization for passing philanthropic values to succeeding generations of the donor's family. Public Directors and the staff of the supported public charity are available to train the next generation in philanthropy and to help ensure that the donor's philanthropic vision is preserved and the philanthropic vision of future generations implemented.

Jill S. Dodd is the Chair of the Business/Tax Group at Steefel Levitt & Weiss in San Francisco. Her practice is focused on the representation of charitable organizations, trade associations and other nonprofit entities, and on trusts, estate and wealth transfer planning for high net worth individuals and families with a particular emphasis on planned charitable giving.

YOUR LOCAL EXPERT ON SUPPORTING ORGANIZATIONS

The East Bay Community Foundation has helped a number of recent donors establish and operate supporting organizations. Many donors contemplating private foundations are excited to learn that they have the option of running their own charitable enterprise in partnership with an established expert in charitable giving. By creating a supporting organization relationship with the Foundation, donors receive the following benefits:

experience

We are the East Bay's premier resource on supporting organizations. We know the issues and can walk you and your client through them. If you come to us with questions, we will provide prompt and clear answers.

simplicity

We will take care of all of the paperwork and filings, which can be numerous. From your client's standpoint, and potentially yours, this can be a seamless turnkey solution. Setting up and maintaining private foundations can be difficult and costly.

service

We provide a broad array of administrative, financial and program services which can be customized to the needs of your client. In this way your client can spend more time on achieving his or her charitable goals and less time on administrative maintenance.

For more information about supporting organizations and the advantages they offer, please contact Virginia Hooper or Chris Nicholson at 925.280.0142.

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