Eliminate Capital Gains Taxes Forever!
A Case For Affordable Philanthropy
By Robert Fagan

Imagine that you could eliminate not only capital gains taxes, but also death taxes forever, while also minimizing your future income taxes. Think of how more rapidly you could grow your assets and how life would be so much simpler. Impossible? No. Voodoo financial planning or part of a tax rebellion, you ask? No, in fact, the solution rests with the Tax Act of 1969 and has been an accepted part of the tax codes ever since.

Better yet, imagine an asset protection plan superior to any corporate structure or offshore holding? If you could protect what you have worked so hard for from lawsuits, divorce, taxes, and the like, would you be interested?

Now that I have your attention, how about also transforming your life from success into significance? Surely financial wealth allows for options, but it doesn't guarantee happiness. Financial wealth combined with gratitude and giving, may get you closer to genuine wealth. If you presently give 15 to 50 percent of your wealth away to the government, wouldn't you rather give 5% or so to exactly the causes you select instead? If this rings true for you, I have a solution that will not only favorably impact your tax situation, but will affect your life as well. Best of all, you don't have to be rich to enjoy all the benefits!

The solution to this puzzle rests with a safe, conservative, time-proven strategy embodied by the formation of a Private Family Foundation, section 501(c)(3) of the IRS tax codes. It may also be termed a non-operating private foundation or charitable trust. By whatever name, it is one of America's most overlooked and least understood vehicles in controlling your wealth. And no, I am not suggesting you take a "vow of poverty" either. My solution is more of a case of "doing well by doing good" -- exactly the strategy that both Bill Gates and Warren Buffett have chosen, though surprisingly it makes sense for folks of very average means. In fact, Canadians and other highly taxed individuals are setting these structures up in America!

In eight years working with non-profits and many more observing the habits of very affluent people, I have learned that surprisingly by and large, the very wealthy are not pre-occupied with owning assets. Rather they are very focused upon controlling and enjoying the use of assets. Besides, in the big scheme, no one truly owns anything; we simply enjoy things while we are alive. We can't take them with us. In setting up a Private Family Foundation, one donates property to that entity, thereby relinquishing ownership forever (hence, a charitable tax deduction right there). Sounds frightening until you realize that you can name yourself as the trustee of the foundation and do indeed control those assets – more than ever, because these assets are not subject to taxation within a foundation. Assets can be bought, held, sold, traded, flipped, exchanged, whatever without any tax consequences – no capital gains. Foundations can survive death, so there is no probate and no death taxes. A foundation's assets cannot be seized by lawsuits, and if you have gifted your assets away, you, too, become less of a target for litigation. As you might surmise, many attorneys don't like this, and others such as the promoters of the 1031 exchanges in real estate would rather you did not know this, but you should!

Now what are the obligations that a Family Foundation must abide by? Essentially there are four things that such a foundation must do, and four than they must not. Among the most important are three. First, there can be no self-dealing, no manipulating assets for your own personal gain. (No, you cannot get your gifts back once given.) That doesn't mean that you can't enjoy those assets, but you cannot directly benefit from them – there is a difference. Secondly, you may not use these assets for any political purposes whatsoever. Thirdly, you must donate to other charities (choice among seven broadly defined areas), a minimum of five percent of your net operating foundation assets each year. That five percent figure can include a nominal excise tax, the costs of administering your foundation (including your fair salary, travel, administrative expenses, etc.), and of course, the donations themselves.

So where can you give your money? Congress was very liberal in establishing this law and not amending it. Why? Today, the government estimates that it costs in excess of $9 of bureaucratic expenses just to give one dollar away. With individuals doing it directly, it costs the government less than fifty cents to give away a dollar. Call it social engineering or just plain commonsense; that is the reason that this code has remained unchanged. Many of these seven areas are ones that Congress would have had to appropriate money to anyway, so they encourage us to do it directly. The following is taken directly from the IRS website; the allowable areas are "religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the preventing cruelty to children or animals. The term *charitable* is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency." Money can be donated internationally as well. Reading the government's own words above, you can readily see why Congress has created this loophole, as some might term it? You can make a difference while preserving and building a legacy. Whether it is saving a high school music, art, or sports program, providing low-income housing, or some type of international donation, the options are nearly as diverse as your imagination. Whatever you choose.

If you could envision directing at least five percent of the value of your gifted assets (not non-income or non-liquid assets such as your home, raw land, or collectibles) to any of those above seven categories of your choice, as opposed to forfeiting up to half of your income/assets in taxes to the government for them to decide how to spend it, the private family foundation may be for you.

Candidly, I had earlier wrongly dismissed foundations as only being a tool for the very wealthy. There are more than 50,000 (and rapidly increasing) such foundations and the interesting thing is that 93% of them have assets of less than $1 million. In California, two modest real estate properties would likely exceed that. The point is that if you make $40,000 annual income, this makes sense for you economically with a quick payback financially. If you invest in real estate, trade stocks or commodities, own a business or a home; this is definitely a strategy you should consider. If you call yourself a financial planner, real estate agent, or similar, this is a critical option to read up on, one that could significantly build your business and reputation by providing added value for your clients.

Must you be the only person to fund your foundation? No. What if you don't have much money to fund your passion? It need not stop you. You and your foundation will not be limited because your foundation will make you eligible to apply for and receive grants. These grants could not only pay you a salary, but also enable you to live your passion, to live your "perfect day" over and over again, helping yourself by helping others. Even if you are unemployed and poor, if you have a dream of doing for others, this is a vehicle that could get you there. If you seek to create a job for yourself or even transition into a "last" career, one to call your own, you can set this up via the private foundation and grant funding.

Initially, I learned that the cost to set up a foundation was dear, typically $15K-30K. Then I discovered an experienced vendor that specializes exclusively in this transaction for a fraction of the cost, making this what I call, "affordable philanthropy" a viable strategy regardless of your income. This provider will even provide a network of lifetime support. Regardless of whom you choose to work with, I do recommend that you do consult with professionals who are experienced in setting these foundations up. While there is no law that requires you to use a third-party to set up your foundation, you will most likely become very frustrated attempting to do so by yourself.

Should you run out and donate all your assets to a Foundation you set up? No, of course not. Discretion is advised and you should do your due diligence. However, be aware that many attorneys and accountants are not schooled in the details of this (i.e. don't understand the difference between and operating and non-operating foundation, confusion with regard to bad publicity on operating foundations, etc.). If you get negative responses, I encourage you to get a second and third opinion, and do question their knowledge of "private non-operating" foundations. The more truly informed advice, the more appealing you will find the Private Family Foundation as a safe, intelligent choice. Anyway, there are twelve important reasons for the creation of a family foundation whether you are single, a couple with no heirs, or have a family. These include:

- An immediate income tax deduction for charitable donations to their Family Foundation.
- Generational accumulation of foundation assets tax-free.
- No gift or estate taxes on any amounts donated to their Family Foundation.
- The opportunity to establish a permanent legacy in their family's name.
- The opportunity to discover and solidify your deepest values, convictions, and financial objectives.
- The creator/founder has complete legal control during his/her life.
- Legal control remains in the family forever.
- Assets within a Foundation are protected; with fewer owned-assets the individual is less of a legal target
- The opportunity to determine when, how much, and to which charity grants will be made.
- Provides a unique and effective training ground to share values and vision with younger generations – or provides a legacy for those with no heirs.
- An understanding of stewardship and self directed social capital.
- Maximum enjoyment and fulfillment from being a grant-maker or donor.
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