Main Street Giving
COALITION

Leveling the Playing Field for Charitable Giving by Small Businesses

Question and Answer

Q. When were S-Corporations created?

A. The Tax Reform Act of 1958 created the S corporation.

Q. Why were S-Corporations created?

A. Small businesses needed an uncomplicated way to incorporate offering them liability protection but with only a single layer of federal tax.

Q. What is the most popular form of business in the United States?

A. The S-Corporation. It is estimated there are over 5 million of them in the U.S., most of them small businesses.

Q. Why would charities support a proposal to allow S-Corporation shareholders contribute part/all of their ownership interests into a Charitable Remainder Trust (CRT)?

A. The recently enacted Tax Cuts and Jobs Act doubled the standard deduction which took the charitable deduction away from about 30 million taxpayers, according to estimates from the Ways and Means Committee. That puts at risk $95 billion/year in charitable giving.

Q. What is a Charitable Remainder Trust (CRT)?

A. A charitable remainder trust is an irrevocable trust that allows the donor to pursue their philanthropic goals while helping provide for expenses in retirement. In practice, a donor makes contributions to a trust, with the understanding that the trust will eventually go to a predesignated charity. The donor can then receive an income stream from the earnings of the trust generally for the remainder of his/her lifetime.

Q. What are the benefits of a Charitable Remainder Trust (CRT)?

A. The charitable remainder trust is a split interest giving vehicle that allows a donor to make a charitable impact while also receiving a stream of income, in many cases to ease retirement. The benefit to the charity is that they can count on a significant gift to sustain a program or mission that is important to the charity.

Q. May S-Corporation stock be donated to a charitable remainder trust?

A. No. S corporation stock, even a single share, donated to a charitable remainder trust will immediately invalidate the S-Corporation election.

Q. May other business organization stock be donated to a charitable remainder trust?

A. Yes. Every other business entity, including C-Corporations and LLCs, can contribute to a charitable remainder trust. S-Corporations are the only entity that cannot take advantage of a charitable remainder trust.

Q. How do we allow S corporation stock to be donated to a charitable remainder trust?

A. By amending the IRC Section 1361(c)(2)(A) to add a charitable remainder trust as a permitted shareholder for S corporations.

Q. Upon receiving and selling the asset donated by the S-Corporation shareholder, wouldn't the charity pay UBIT on the proceeds?

A. Yes, and that is why the unrelated business income tax (UBIT) rules need to be revised as well to permit the charity to avoid UBIT on that sale, just as it does upon the sale of an asset donated by a C-Corporation shareholder and LLC shareholder.

Q. How do we address the UBIT rules?

A. We amend IRC Section 512(e)(1) rules applying to UBIT, exempt S corporation stock in CRTs from assessment on appreciated value when sold by the trustee of the CRT.