THE NEW YORK COMMUNITY TRUST

PROFESSIONAL TAX & ESTATE PLANNING NOTES

October 2009

A Private Foundation *and* a Fund in a Community Foundation: Does Your Client Need Both?

Your client has a private foundation that gives him a lot of pleasure. He gives generously to the arts and he particularly enjoys having his adult children, who share his passion, involved. But he's been thinking about succession. He knows his kids are interested but doesn't know if his grandchildren, who are in their 20s, will feel the same commitment. The foundation is named for his parents, and he'd like the family's generosity to be remembered long after he's gone.

To allay this concern and others, you and your client should consider a fund in a community foundation—in addition to the private foundation. And although many people consider such funds as *alternatives* to private foundations (which they often are), they can also be complementary.

Over the last two decades, the number of family foundations exploded. Sixty percent of these foundations have assets of less than $1 million, and almost half give away less than $50,000 a year. Only the very largest can afford grant, legal, accounting and administrative staff. Even among family foundations with assets of more than $5 million—including the Gates Foundation at $33 billion—only 27 percent have staff.[1] A recent study by the Foundation Center suggests that families are beginning to worry about succession and, in this economy, whether the costs of their foundations are eroding the amount of money they are able to give away.

In the June issue of *Professional Notes* we compared the costs and benefits of a private foundation with a fund in a community foundation, such as The New York Community Trust. This issue will discuss why donors who have private foundations should also have a fund in a community foundation.

[1] "Key Facts on Family Foundations," The Foundation Center, April 2008. Numbers reported are for 2006, the latest data available.

If you think a colleague would like to receive complimentary copies of *Professional Notes*, or if you wish to obtain past issues, please visit www.nycommunitytrust.org or call our receptionist at (212) 686-0010, Ext. 0. For more information, call Jane L. Wilton, general counsel, at (212) 686-2563.

ISSUES IN THIS SERIES

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Succession Planning

Let's get back to your happy client who's concerned about what happens to his philanthropy after his death. He can trust to fate and hope his grandchildren share his love of the arts. He can spend out the private foundation. Or he can make a distribution of part of the foundation's assets to establish a fund in a community foundation with the same name as the private foundation and give his grandchildren advisory privileges. He may choose to limit the use of the fund to the arts, or make it broader. His grandchildren can call on the community foundation's staff for advice and guidance and get experience making grants in a variety of areas. If, after some time, the grandchildren have become avid arts philanthropists, your client can relax, knowing that the private foundation will be continued. The grandchildren can either pay out the principal of the donor-advised fund or decide to keep it as an adjunct to the family's private foundation to support other issues. And if they don't show much interest, the donor can set a termination date for the private foundation, with the assets then transferring to a field-of-interest fund for the arts. The community foundation will make grants for the arts in the family's name—forever.

Foundations with a Primary Focus

A number of private foundations work with The Trust and other community foundations to support projects in their areas of focus. People with private foundations also frequently turn to their community foundation when they want to make grants outside their foundations' primary focus. Jane Smith, for example, was educated in the public schools, and holds a BA and MA from City College. Not surprisingly, her private foundation is dedicated to improving public education for today's children. But she's a quintessential New Yorker and cares about a lot of other City issues, particularly parks and open spaces. She's become an expert on the public schools by investing time and energy to learn about its complexities before she makes a grant. She wants the same care to go into contributions she makes for parks, but doesn't want to make the same investment in gathering the information she needs to feel confident that her grants will be effective.

Her local community foundation, The New York Community Trust, has been working on greening the City for years. Working with government and nonprofits, it has supported community gardens, efforts to rejuvenate the waterfront, projects to preserve open spaces, programs to train poor kids for horticulture jobs, and more.

Ms. Smith's lawyer suggests that she create a field-of-interest fund for parks and open spaces at the community foundation. She can transfer assets from her private foundation, which are qualifying distributions. Or, she can contribute cash, publicly traded securities, retirement assets, closely held stock, limited partnerships, life insurance, and copyrights. The fund may be started with a single contribution or with smaller annual contributions to support its grant activity.

The community foundation's staff goes to work, reviewing proposals from effective nonprofits and reporting back to Ms. Smith on the grants made from the fund. If Ms. Smith wishes, she can serve as an advisor to the fund, and The Trust's staff instead will recommend organizations she can support through grants from the fund.

Ms. Smith may be a bit leery that these grants will result in proposals to her private foundation for projects that aren't related to the public schools. In that case, she can give her fund a generic name or make her grants anonymously—something she can't do with her private foundation.

Clients with Broad Charitable Interests

Beth and Dan Jones set up their private foundation out of a simple desire to give back. From working class families in the Bronx, they met in high school, married young, and started a business. It was successful beyond their dreams—so successful that they were bought out by a Fortune 500 company.

They say that they're not particularly "strategic" about their giving and enjoy contributing to a variety of charities that touch them. They give to the annual funds of the colleges they attended, the churches they went to as kids, the local food pantry, the opera, summer camp for poor children, and much more. Recently, they've decided they wanted to bring cohesion to their philanthropy, but they don't know where to start. They are clear that they don't want to be responsible for an employee, nor do they feel they need an expensive philanthropy consultant. Their lawyer suggests that they open a donor-advised fund in their community foundation so that they can meet with staff who will help them focus their interests and work with them to develop a flexible grantmaking plan that they can modify over time. They'll get as much support as they want—for a modest fee—from a staff that has worked for years on health care, community development, the environment, social services, youth development, human justice, and more. And they can trust the community foundation to continue giving in their names after their deaths.

Complicated Assets

Certain assets receive more favorable tax treatment if contributed to a public charity, such as The Trust, rather than a private foundation. These assets include closely held stock and other securities that are not publicly traded, copyrights, and limited partnership interests.

Jack Burns is an executive with a global investment management firm. He and his wife have a private foundation that they set up many years ago with publicly traded securities. Today, a good share of the Burns' wealth is in his company's stock. Although it's publicly traded, Jack's shares are subject to Rule 144 (i.e., restricted stock that is not readily marketable under SEC rules), which the IRS has ruled is not "qualified appreciated stock," limiting his charitable income tax deduction for gifts of his stock to the private foundation to basis.

Contributions of these assets to a public charity, which includes the Burns' local community foundation, will qualify for a full fair market value deduction. But many charities are unable to handle the complicated process of accepting these assets and converting them for charitable use. Mr. Burns's lawyer suggests that he establish a fund in his local community foundation, which is experienced in accepting unusual gifts.

Community Philanthropy

Community foundations such as The New York Community Trust employ individuals who are skilled in grantmaking, investing, legal issues, and donor service. Because they operate in a particular community, they have broad and deep knowledge of local challenges and opportunities. They know the effective nonprofits working on important community issues. They bring together nonprofits, government, and other funders to work jointly on common problems. Philanthropists who have private foundations, particularly if they don't employ staff, will find that a fund in a community foundation is a satisfying—and cost effective—adjunct to their giving. And they've already created a vehicle to carry on their philanthropy after their lifetimes.

Here in New York City, the challenges that always confront us are enormous: improving schools, keeping the arts alive, feeding the hungry, revitalizing neighborhoods, protecting the environment, providing affordable health care. Meeting them requires far more money and time than any one person can give. By setting up a fund in The New York Community Trust, your clients join their generosity with thousands of fellow New Yorkers, past and present, who want to give back to their city. Collectively, our grants support a universe of effective nonprofits who work daily to make New York shine.

Conclusion

A number of New York Community Trust donors also have private foundations. A fund in The Trust may be an adjunct to the private foundation, supporting different causes than the private foundation, or established with assets best given to a public charity. A fund is an easy way to engage the next generation in giving. And a fund in The Trust may be part of a long-term plan for spending down the private foundation's assets, while keeping alive the foundation's name.

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2000 Charitable Gifts Using Publicly Traded Securities
Charitable Gifts Using Restricted or Closely Held Stock
Charitable Gifts Using Life Insurance

2001 Gifts of Partial Interests in Property
Timing of Charitable Contributions

2002 Grants by Private Foundations to Individuals & Foreign Organizations
Grants by Public Charities to Individuals
Grants by Public Charities to Foreign Organizations

2003 Investment Standards of Charities
Uniform Principal & Income Act
Endowment Funds of Not-for-Profit Corporations

2004 Use of Qualified Disclaimers in Estate Planning
Estate Planning Using Retirement Assets

2005 Legislative Proposals to Reform Charity: Chapter I
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2006 Estate Planning for Married Couples
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Estate Planning for Individuals and Non-Traditional Families

2007 The Pension Protection Act of 2006: Implications for Charitable Giving
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2009 Transferring a Private Foundation to a Community Foundation
A Private Foundation or a Fund in a Community Foundation: Weighing the Options
A Private Foundation *and* a Fund in a Community Foundation: Does Your Client Need Both?

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About The Trust

For 85 years, The New York Community Trust has served the needs of donors and nonprofits in the New York area. One of the oldest and largest community foundations, The Trust is an aggregate of funds created by individuals, families, and businesses to support the voluntary organizations that are crucial to a community's vitality.

Grants made from these funds—which now number nearly 2,000—meet the needs of children, youth and families; support community development; improve the environment; promote health; assist people with special needs; and bolster education, arts, and human justice.

In addition to reviewing proposals from nonprofit agencies and responding to the grant suggestions of donors, The Trust is alert to emerging issues and develops strategies to deal with them, works collaboratively with other funders and with government, and gets out information to the public. Recent initiatives have included programs that address youth violence, managed health care, immigration, child abuse, and public school reform.

The Trust is governed by a 12-member Distribution Committee composed of respected community leaders. Its staff is recognized for its expertise in grantmaking, financial administration, and donor services. Local divisions are located on Long Island and in Westchester. In 2008, The Trust made grants of $168 million from $1.5 billion in assets.

For more information call Jane L. Wilton, general counsel, at (212) 686-2563.

OUR SUBURBAN DIVISIONS

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