

To: Our Clients and Friends

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Tax Advantaged Ways to Utilize a Corporate Sponsored Charitable Organization

There are several tax and non-tax reasons to establish a corporate sponsored 501(c)(3) charitable organization. Tax benefits generally include a current income tax deduction and avoidance of gain on a subsequent disposition of appreciated property. Non-tax benefits include the publicity, goodwill, and marketing benefits associated with charitable giving, the ability to isolate charitable giving in a separate entity and strategically focus such charitable giving, and the ability to maintain consistent philanthropy by establishing an endowment. This memorandum focuses on less-utilized but uniquely tax-advantaged rules available to corporate sponsored charitable organizations, including (1) employee disaster relief and emergency hardship assistance programs, (2) employee scholarship programs, and (3) use of the "conduit" rules to obtain a fair value deduction with respect to gifts of appreciated property.

1. Employee Disaster Relief and Emergency Hardship Assistance Programs

A corporate sponsored charitable organization may conduct disaster relief and emergency hardship assistance programs for the benefit of its sponsoring corporation's employees. With respect to a corporate sponsored "private foundation" (*e.g.*, where the charitable organization receives substantially all of its support from the corporation), relief may be provided to employees who are victims of any Presidentially declared disaster, which may include an earthquake, flood, hurricane, or tornado. With respect to a corporate sponsored "public charity" (*e.g.*, where the charitable organization receives support from the corporation and employees), relief may be provided to employees who are victims of any Presidentially declared disaster or any emergency hardship resulting from a severe personal crisis, such as a fire, accident, illness, death, or crime.

Relief must be provided based on an objective determination of need and the selection committee should be comprised of individuals who are not in a position to exercise substantial influence over the sponsoring corporation. In addition, the disaster relief and emergency hardship assistance programs cannot be used by the sponsoring corporation to recruit or induce employment or otherwise satisfy an

obligation to provide employee benefits. See IRS Publication 3833, Disaster Relief, for additional discussion regarding disaster relief and emergency hardship programs. If the requirements are satisfied, donors who contribute to the charitable organization are entitled to an income tax deduction and the relief payment is not treated as taxable compensation to the employee.

2. Employee Scholarship Programs

A corporate sponsored charitable organization may conduct a scholarship program for the benefit of its sponsoring corporation's employees and/or children of such employees. Scholarships must be awarded on an objective and non-discriminatory basis. The scholarship program may not be used to induce employment or represent compensation for services, and availability must be limited by non-employment related factors. With respect to a corporate sponsored private foundation, the scholarship selection committee must also be independent from the private foundation and sponsoring corporation, and the scholarship program must be approved in advance by the IRS. See IRS Rev. Proc. 76-47 for additional requirements. If the requirements are satisfied, donors who contribute to the charitable organization are entitled to an income tax deduction and the scholarship payment is not treated as taxable compensation to the employee.

3. Conduit Rules - Fair Value Deduction for Gifts of Property to a Private Foundation

Corporate sponsored charitable organizations typically qualify as private foundations because most of their support is provided by the sponsoring corporation. Under these circumstances, sponsoring corporations often limit their donations to cash contributions since the deduction for contributions of appreciated property to a private foundation is generally limited to the cost basis in the property. If the private foundation can qualify as a "conduit" foundation in the year of contribution, however, the amount of the charitable deduction with respect to a donation of appreciated property may equal the fair market value of such property, assuming there is no depreciation recapture with respect to the property.

A private foundation can qualify as a conduit foundation if it (a) satisfies the minimum distribution requirements for the current and all prior years and (b) makes additional distributions in an amount equal to the contributions received (excluding cash) for the year. These requirements may be satisfied by making actual current distributions and/or by electing to treat as current distributions any excess distribution carryovers from the prior five taxable years. See Treas. Reg. § 53.4942(a)-3(c)(2)(iv). Therefore, a corporate sponsored private foundation with excess distribution carryovers may easily satisfy the conduit rules in an amount equal to such carryovers, which often expire unused.

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To discuss this issue further, please speak to your Bryan Cave contact, or to:

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