

## J. Gifts Made Through An Inter Vivos Trust

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A Trust can be a great vehicle by which to make a large gift. This is because a tax receipt can be obtained right at the time the Trust is created, and applied against other income for up to six years. The assets are actually transferred to the Foundation at the time the Trust is created, however the donor (or a beneficiary designated by the donor) remains the recipient of all income during his/her lifetime.

The technique requires that the donor set aside a certain fund of money. The Trust Agreement sets out that the donor (or a nominee) will control the management of the fund as trustee and that the donor (or a nominee) will receive the income from the fund while he or she is alive. Upon his or her death, the fund will be payable to the Community Foundation. The donor, in essence, forgoes the right to use the capital, or to change his or her mind as to where the capital goes on his or her death.

Once the Trust is funded, the Foundation will issue a tax receipt in the year the Trust is created, but not for the full amount paid to the Trust. The amount is, instead, discounted by the remaining life expectancy of the donor. The capital must be left intact for the charity, or only eaten into at a fixed rate. If the trustee has the discretion to eat into the capital for the benefit of the donor without limitation, the tax receipt will be valueless.

This sort of arrangement is referred to as a **charitable remainder trust**. The Trust is established by and for the immediate benefit of a living individual (**inter vivos trust**). The inter vivos trust, when established properly, will have the added benefit of avoiding probate fees that would be charged on the assets if they were dealt with by the donor's Will.

The transfer of non-cash property to the Trust will normally generate a deemed disposition of that property at fair market value, and therefore produce taxable income. However, the donor can select the tax value at which property is transferred, and therefore, if desired, avoid exposure to any capital gain, or trigger enough income to off-set losses incurred elsewhere. The changes made in the Federal Budget of 1997 gives a donor other options for minimizing any increase to his or her taxable income as a result of capital gains realized on the donation. (See Section H: *Gifts of Property Other Than Cash*)

Where real estate is involved, the donor can avoid the use of a formal Trust agreement and simply transfer the property to the Community Foundation subject to his or her registered **life interest**.



The charitable remainder trust might work well in the following case:

An elderly couple with no children, or with well-to-do children, plan to leave some of their combined estate to the Community Foundation after they both die. They are confident that they can commit a portion of their capital to the Foundation now, and receive only the income it produces. They like the idea that control of the capital remains in their hands. They understand the ground rules: they cannot touch the capital, and they cannot change the ultimate beneficiary. They also realize that the value of the assets placed in such a Trust will not form part of their estate for probate fee calculation.

Technical Reference

IT-226R Gift to a charity of a residual interest in real property or an equitable interest in a trust.

