1916-2016
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Philanthropy in Iowa in 2019: Challenges and Opportunities

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Part 1

Conservation Easements
and
Landowner Options for
Creating a Conservation Legacy

Protecting Iowa's Special Places: What happens to my land when I die?

- Will my kids sell the farm?
- Will my kids disagree about whether to sell the farm?
- What if my kids don't want the farm?
- Will whoever comes after see the conservation value of the land, or only its economic value?

How Can a Landowner Protect His or Her Land's Non-Economic Values After Death?

- Donate the land to conservation-minded non-profit organization ("non-profit")
- Donate a remainder interest in the land to non-profit (farm or home)
- Can be done as a bargain sale
- Leave the land to his children subject to a conservation easement held by a private land trust (or public entity)

This issue is close to my heart:

- https://indiancreeknaturecenter.org/gallery/parade-of-prairies/
- https://www.thegazette.com/indian-creek-nature-center-parade-of-prairies-2019-mount-vernon-20190715

What is a Land Trust?

- A private non-profit: the perfect charity for small-government Republicans who like the outdoors and believe in sustainability of the planet as well as of the economy.
- Focused on protecting the non-economic property values of land for posterity
- 17,000 land trusts exist; they protect 40 million acres.
- Notable in Iowa:
  - The Nature Conservancy (worldwide)
  - The Iowa Natural Heritage Foundation (just Iowa)
    - Founded by Republican Governor Robert Ray (with help from Robert Buckmaster)
    - I am on the board of this organization. It is a great organization, with broad bipartisan support.
  - Bur Oak Land Trust (Johnson County)
  - Whiterock Conservancy (Garst family---Khrushchev visited their farm)

Federal Deduction for Conservation Gifts

IRC 170(h) Qualified conservation contribution

- In general for purposes of subsection (f)(3)(B)(iii), the term “qualified conservation contribution” means a contribution—

  (A) of a qualified real property interest,

  (B) to a qualified organization,

  (C) exclusively for conservation purposes.

- Qualified real property interest for purposes of this subsection, the term “qualified real property interest” means any of the following interests in real property:

  (A) the entire interest of the donor other than a qualified mineral interest,

  (B) a remainder interest, and

  (C) a restriction (granted in perpetuity) on the use which may be made of the real property.

  Surface Mining Must be prohibited.

Conservation Gifts of Land

IRC 170(h)(4) Conservation purpose defined

- In general for purposes of this subsection, the term "conservation purpose" means—

    (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

    (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

    (iii) the preservation of open space (including farmland and forest land) where such preservation is— (I) for the scenic enjoyment of the general public, or (II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

    (iv) the preservation of an historically important land area or a certified historic structure.

Federal Deductibility of Conservation Gifts

- 50% of the taxpayer's contribution base (AGI) less other charitable gifts.
  - 100% of contribution base (AGI) for certain "qualified farmer or rancher" whose gross income from the trade or business of farming is greater than 50% of taxpayer's gross income for the taxable year, and to qualify for this added benefit, the easement must be a donation of land that is used in or available for agriculture or livestock production, and the easement must provide that the property must remain available for agriculture or livestock production.

- Carry forward: 15 succeeding years.

- Made "Permanent" by the 2015 Congress (PATH Act).

State of Iowa Tax Incentives for Conservation Easements

Since 2008, Iowa has a tax credit for charitable conservation contribution of land

- This credit is available when a taxpayer donates Iowa land for conservation purposes to a qualified conservation organization (outright or via a bargain sale) or grants a permanent conservation easement on Iowa land that qualifies for federal deductibility.
- The Credit is 50% of the fair market value of the gifted interest
- Maximum tax credit per donor is $100,000 (50% of a $200,000 gift)
- Unused portion of this credit can be carried forward 20 years.
- Excess gift by donor beyond $200,000 is eligible for an Iowa income tax deduction.

State of Iowa Tax Incentives for Conservation Easements, *cont…*

- Individuals may claim the credit for donating land held in a partnership, a limited liability company, an S corporation, or an estate or trust electing to have the income taxed directly to the individual. The amount you can claim is based on your pro-rata share of your earnings of the partnership, limited liability company, S corporation or estate or trust. Each entity is subject to the $100,000 limit (rather than each owner).

- We believe that a husband and wife can each separately claim this credit if they gift separate interests in land, even if they file jointly, but do your own research.

- It is possible to give different portions of a valuable farm each year to stay under the $200,000 maximum.

Conservation Gift Example 1

- Qualified Appraisal shows that BlackAcre is worth $300,000 for Development, near Cedar Falls
- Donor gifts conservation easement to INHF, giving up right to develop, subdivide, or make changes to property that would reduce the conservation value of the property.
- Qualified Appraisal shows that BlackAcre is worth $100,000 as open space for wildlife habitat and public recreation after easement is donated, such that the gift of the conservation easement reduced the fair market value of the property from $300,000 to $100,000.
- Donor's AGI in year of gift is $800,000, federal rate 37%
- Donor files a timely return, fully documenting the gift, and attaches qualified appraisals which meet all requirements.

Conservation Gift Example 1, *cont…*

- Iowa Conservation Gift credit: $100,000 (50% of the $200,000 gift)

- Federal Deduction (after August 28, 2018)
  - $100,000 ($300,000 - $100,000 retained value - $100,000 Iowa credit)
  - $100,000 x 37% = $37,000 federal tax benefit
  - If AGI were less than $400,000 (non-farmer) or $200,000 (farmer) excess deduction carried forward to future years.

- Total State and Federal Tax Benefits:
  - **$137,000** if gift after 8/28/2018 (68.5% of gift)

Part 2

Tax Law Changes and Implications for Tax-Efficient Charitable Giving Since January 1, 2018

2018 Changes to the Tax Economics of Charitable Giving

Charitable Giving is More Tax-Efficient since January 1, 2018 than in prior years in multiple respects:

1. The Pease Limitation on Itemized Deduction Has Been Repealed, which makes the charitable deduction more valuable in many cases.
2. The federal charitable deduction is no longer offset (for most high income taxpayers) by a reduced deduction for state and local taxes (SALT deduction capped at $10,000 even for joint taxpayers).
3. The AMT will impact far fewer people, making it easier to calculate one's tax benefit.

But:

1. Fewer people will itemize, because there is a cap on the federal deductibility of state and local income tax ("SALT"), and because the standard deduction has increased ($24,000 for joint filers).
2. A proposed rule issued in August 2018 will reduce the federal tax benefit for gifts that qualify for Iowa tax credits (such as Endow Iowa or conservation tax credits).
3. Reduced tax rates marginally reduce the economic incentive to make charitable gifts.

What was the Pease Limitation on Itemized Deductions?

- The Itemized Deduction Phase-Out (“Pease Limitation”) Reduced Marginally the Tax Benefits of Charitable Giving for Some Itemizers in 2013-2017
- In 2017, if your AGI was more than a threshold amount ($300,000 in 2013 for married filers filing jointly and $250,000 for single taxpayers, indexed to inflation for subsequent years), then your itemized deductions were reduced by 3% of the excess.
  - Example 1: If a married couple’s AGI was $500,000 in 2013, then their itemized deductions for 2013 were reduced by 3% of $200,000, or by $6,000. This included their mortgage deduction and their charitable deductions.
  - Example 2: If that married couple’s AGI was $1,000,000 in 2013, then their itemized deductions for 2013 were reduced by 3% of $700,000, or by $21,000. This included their mortgage deduction and their charitable deductions.

THIS LIMITATION DOES NOT EXIST FOR 2018, 2019, OR IN FUTURE YEARS

How could the $10,000 cap on the deductibility of SALT increase the tax benefits of charitable giving?

Married couple, AGI $1M
Gifts $100,000 to United Way in 2017

Federal charitable deduction of $100,000

39.6% rate

Federal tax benefit is $39,600

Opportunity cost:$3,564

(8.98% Iowa tax x $100,000 x 39.6% deduction for Iowa taxes paid)

Total federal benefit: $36,036

(before applying Pease limitation)

Married couple, AGI $1M
Gifts $100,000 to United Way in 2019

Federal charitable deduction of $100,000

37% rate

Federal tax benefit is $37,000

Opportunity cost: none if total state and local income tax (SALT) over $10,000 even after gift.

Total federal benefit: $37,000

How could the $10,000 cap on the deductibility of SALT increase the tax benefits of charitable giving?

Married couple, AGI $1M
Gifts $100,000 to United Way in 2017

Total federal benefit: $36,036
(before applying Pease limitation)

Pease limit threshold: $313,800
Excess: $686,200
3% of excess: $20,586.

Potential reduction of $36,036 charitable deduction due to Pease Limitation: $20,586. (Only reduces charitable gift if this limitation hasn't already been absorbed by other itemized deductions like mortgage interest and SALT)

Married couple, AGI $1M
Gifts $100,000 to United Way in 2019

Total federal benefit: $37,000

No Pease Limitation to analyze.

What is the Opportunity Cost of Electing the Charitable Deduction in 2018/2019 Compared to 2017

2017

STANDARD DEDUCTION

Individual	$6,350
Head of HH	$9,350
Married Jt	$12,700

CAP ON SALT DEDUCTION

Individual	None
Married Jt	None

CAP ON LOAN FOR MORTGAGE DEDUCTION
$1,000,000

30% of taxpayers itemized because of mortgage interest, SALT, and charitable giving

2018

STANDARD DEDUCTION

Individual	$12,000
Head of HH	$18,000
Married Jt	$24,000

CAP ON SALT DEDUCTION

Individual	$10,000
Married Jt	$10,000

CAP ON LOAN FOR MORTGAGE DEDUCTION
$750,000

Fewer than 10% will itemize

Example 1: Married Couple

$300,000 per year in taxable income
$250,000 mortgage at 4% interest ($10k/year)
$6,000 annual charitable giving

2017

Federal deductions if they itemize
Iowa tax: $20,000 (estimated)
Charitable: $6,000
Mortgage interest: $10,000

Total itemized deductions: $36,000

Standard Deduction (opportunity cost of itemizing): $12,700

Increased deductions if they itemize: $23,300

Marginal tax rate 33%

Benefits to taxpayer of itemizing: **$7,689**.

(no Pease limitation since AGI not over $313,800)

2018

Federal deductions if they itemize
Iowa tax: $10,000 (capped)
Charitable: $6,000 (unchanged)
Mortgage interest: $10,000

Total itemized deductions: $26,000

Standard Deduction (opportunity cost of itemizing): $24,000

Increased deductions if they itemize: $2,000

Marginal tax rate 24%

Benefits to taxpayer of itemizing: **$480**
(less increased tax preparation costs etc.)

BE A LUMPY GIVER

-Make gifts to charity every 2-5 years

-Maybe pay 13 months of mortgage payments in the years you itemize.

-Take the Standard Deduction in the other years

-If it is important to have your favorite charities receive a gift annually rather than in "lumpy" fashion, utilize a non-endowed donor-advised fund (for example at a community foundation) to receive the gift every fifth year and disperse grants to your preferred charities in the years you take the standard deduction.

Example 2: Married Couple Making "Lumpy Charitable Gifts"

$700,000 per year in taxable income

no mortgage debt

$14,000 per year in charitable gifts

Annual charitable giving of $14,000

Federal deductions if they itemize

Iowa tax: $10,000 (capped)

Charitable: $14,000 (unchanged)

Total itemized deductions: $24,000

Standard Deduction (opportunity cost of itemizing): $24,000

Increased deductions if they itemize: $0

Marginal tax rate 37%

Benefits to taxpayer of itemizing: **$0**

$28,000 to Community Foundation donor-advised fund every 2 years

Federal deductions the year this gift is made

Iowa tax: $10,000 (capped)

Charitable: $28,000 (unchanged)

Total itemized deductions: $38,000

Standard Deduction (opportunity cost of itemizing): $24,000

Increased deductions if they itemize: $14,000

Marginal tax rate 37%

Benefits to taxpayer of itemizing: **$5,180**

Per year benefit of this strategy: $2,590

Example 2: Married Couple Making "Lumpy Charitable Gifts"

$700,000 per year in taxable income
no mortgage debt
$14,000 per year in charitable gifts

Annual charitable giving of $14,000

Federal deductions if they itemize
Iowa tax: $10,000 (capped)
Charitable: $14,000 (unchanged)

Total itemized deductions: $24,000

Standard Deduction (opportunity cost of itemizing): $24,000

Increased deductions if they itemize: $0

Marginal tax rate 37%

Benefits to taxpayer of itemizing: **$0**

$70,000 to Community Foundation donor-advised fund every 5 years

Federal deductions the year this gift is made
Iowa tax: $10,000 (capped)
Charitable: $70,000 (unchanged)

Total itemized deductions: $80,000

Standard Deduction (opportunity cost of itemizing): $24,000

Increased deductions if they itemize: $56,000

Marginal tax rate 37%

Benefits to taxpayer of itemizing: **$20,720**
Per year benefit of this strategy: $4,180

Benefits of lumpy giving in my example

Gift every 2 years $2,590/year annualized economic benefit
(62% of 5-year strategy; 75% of 3-year strategy)
Gift every 3 years $3,453/year annualized economic benefit
Gift every 4 years $3,885/year annualized economic benefit
Gift every 5 years $5,180/year annualized economic benefit

Note 1: Ideally, you would fund the lumpy gifts with appreciated stock (non-cash gifts deductible up to 30% of AGI) plus cash (up to another 30% of AGI, 60% total)

Note 2: While there is a 5-year carry-forward for unused charitable deductions, the "lumpy" feature is optimized if you can absorb the entire gift in the year it is made.

Note 3: I tried this with a big gift to a donor-advised fund in 2017, and I ended up spending my donor-advised fund faster than I had anticipated. What I thought would be 3-4 years will last me only 2. Once the money is in that fund, it seems easier to spend.

Unique Iowa
Income Tax Credits

and the threat posed to them by
August 2018 proposed IRS rules

Iowa's Income Tax Credits for Charitable Giving

- Qualified School Tuition Organizations: 65%

65% ($12M/year statewide cap)

- Conservation Gifts (Land; Remainder Interests in Land; Conservation Easements): 50%

50% (no statewide cap)
($200,000 maximum gift/person/year)

- Endow Iowa Funds at Community Foundations: 25%

25% ($6M/year statewide cap)
($1,200,000 maximum gift/person/year; 2019 credits used up by February 2019, currently gifts are wait-listed for 2020 credits)

New Regulations

- The Treasury Department has adopted new regulations that will dramatically reduce the federal tax benefit for charitable gifts that qualify for these Iowa income tax credits.
- The new regulations were created primarily to thwart recent state legislation to avoid new limits on the deductibility of state and local tax (SALT) payments.
- California had proposed that it would reduce state income taxes dollar for dollar by the amount of charitable donations that a taxpayer made to the State of California, for example. These regulations would treat those tax credits as "payment" for the purported charitable gift, and would deny the California taxpayer a federal charitable deduction for such payments to the State.

New Regulations

- However, the regulations were drafted broadly to treat all credits given to taxpayers by states as “consideration” for charitable gifts, even when the charitable gifts are made to private charities. The regulation calls these tax credits a “quid pro quo.”
- For example, if I give $10,000 to the Community Foundation of Northeast Iowa and receive a $2,500 Endow Iowa Credit, the new regulation will reduce my federal charitable deduction from $10,000 to $7,500, because they will treat the gift as a “bargain sale,” essentially, where I receive $2,500 from Iowa in consideration for $10,000 of contributed property, making my “charitable” contribution only $7,500 ($10,000 - $2,500 = $7,500).

New Regulations

- This new regulation applies to all credits (and deductions) that exceed 15%. If Iowa were to reduce the Endow Iowa credit to 15%, for example, the regulation would no longer apply to the Endow Iowa credit. But until Iowa does that, Endow Iowa credits reduce the donor's federal deduction by 25% (the amount of the credit given).

New Regulations

- The proposed regulations were published on August 27, 2018, and will apply to all gifts made on or after August 28, 2018. So a gift made today would fall under the proposed regulations, while a gift made this past Spring would not.

- The IRS received comments on these proposed regulations and conducted a hearing on November 5, 2018. The regulations were made final in June of 2019.

Iowa's School Tuition Organization Tax Credit

- School Tuition Organizations (STO) are 501(C)(3) charitable organizations that raise tuition grant funding for eligible students who enroll in accredited nonpublic schools in Iowa. Iowa taxpayers who donate to STOs are eligible for a tax credit equal to 65 percent of the total contribution plus a federal tax deduction. The STO must encompass more than one school, and 90 percent of its revenue must go toward tuition grants for eligible Iowa (low-income) children attending a qualified school selected by their parents. No earmarking for family members is allowed.
- Credit: 65% of amount donated
- Carry-forward: 5 years.
- Total credits available: About $12 million/year

Example of How Proposed Regulations Will Effect ISTO Tax Credit

- $100,000 gift to qualifying ISTOs
- $65,000 Iowa tax credit awarded
- Federal deduction reduced from $100,000 (before August 28, 2018) to $35,000 (after August 28, 2018). At a 37% tax rate, this reduction reduces taxpayer's tax benefit by $24,040.
- *Note that without this reduction, the combined tax benefit of the gift would be $102,000 (37% + 65%).* Because SALT is no longer deductible, and because there is no Pease limitation on itemized deductions, Treasury believed this combined tax benefit is too rich.
- Note that the IRS has indicated it may continue to allow businesses such as pass-through entities to take a *business* deduction for gifts of this type. But individual taxpayers would not have this opportunity.

The Endow Iowa Tax Credit

The Endow Iowa Tax Credit

- State credits (25%) for endowed gifts to Qualified Iowa Community Foundations for causes in Iowa.
- Intended to incent creation of private endowments for philanthropy in Iowa
- Broad bipartisan support
- Credits have increased over time
- 2019 Credits were used up in 2018
- A successful example of tax policy used to target particular forms of philanthropy where the legacy is perpetual and benefits Iowa.
- www.iowacommunityfoundations.org

The Endow Iowa Tax Credit

- Limit on individual gift/year: $1,200,000 ($300,000 credit)
- Limit on married couple's gift: $2,400,000 ($600,000 credit)
- Total limits in credits for 2018: $6,000,000 (all used up)
- Donations in 2018 now receive 2019 credits
- 5-year carry-forward
- You don't have to itemize to claim this credit
- Gifts of grain can qualify for these credits even though the grain is not taxed
- Gifts of appreciated stock can qualify
- Direct IRA roll-overs can qualify

Types of Endow Iowa Funds

- Donor-Advised Endowed Fund
  - A simpler alternative to a private foundation
  - If funded during life, tax benefits much greater than private foundation due to Endow Iowa credits
  - Advice vs. Control

- Agency-Created Endowed Fund

- Designated Fund
  - Endow your charitable giving to organizations you care about
    - United Way
    - Indian Creek Nature Center
    - Mercy Cancer Center

Types of Endow Iowa Funds

- Endowed Field of Interest Fund

- Unrestricted Endowed Fund

Direct Charitable IRA Rollover to an Endow Iowa Fund at an Iowa Community Foundation is Still Very Powerful

- **You Don't Have to Itemize to use this strategy to avoid all state and federal tax on IRA distributions and receive a 25% Endow Iowa tax credit. *However, the fund cannot be a donor-advised fund*.**

- **The new regulations don't adversely impact this strategy because no federal deduction is needed to avoid income tax.**

- **Conclusion: This is a unique opportunity for individuals over age 70.5 who don't have a mortgage and wish to be charitable. It is in most cases, the most tax-efficient way for them to give to charitable causes in Iowa.**

Rules Regarding Charitable IRA Rollover:

- Donor must be age 70.5 or older;
- Maximum of $100,00 per year per individual (married couples are two individuals);
- Distributions must be made directly to a qualified charity by the plan administrator of an IRA (not distributed to participant and then donated);
- Retirement assets in 401(k), 403(b), SEP, or SIMPLE plans **do not qualify** but may be rolled into a new or existing IRA and transferred to the charity;
- Distributions may only be made to 501(c)(3) tax exempt organizations and **cannot be made to donor advised funds, private foundations, or supporting organizations**;
- Distributions may not be used to fund life-income gifts such as charitable gift annuities, charitable remainder trusts, or pooled income funds;
- The rolled-over amount counts against the participant's minimum required distribution for the year in question, but does not constitute taxable income of the participant who never receives it.

Endow Iowa Credits Can Benefit all Iowa Charities

- The Moral of the Story for Iowa Charities is:
  - Partner with a Community Foundation
  - Establish an Endow Iowa Fund benefitting your organization
  - Communicate to Your Donors About the Opportunities to Leverage Their Endowed Giving With Endow Iowa Credits.
  - Talk in Particular about Direct Charitable IRA Roll-overs to Endow Iowa Funds (that are not donor-advised funds)

Endow Iowa Example 2

- Example: John Brown, with an AGI of $500,000 donates a 40 acre farm with basis of $1000/acre and a Fair Market Value of $10,000 per acre to the Johnson County Community Foundation, to be added to the designated fund for the Iowa City Community School Foundation.
- This gift is worth $400,000, but it will take him 3 years to absorb the federal income tax deductions, since 30% of his AGI is $150,000.

Endow Iowa Example 2 (Continued)

- The donor will receives a $100,000 state income tax benefit over time, assuming he has sufficient state income tax to absorb it over 5 years.
- Assuming a 35% federal marginal rate and that the proposed regulations are adopted, this $400,000 gift may generate a federal tax benefit as high as $105,000 (.35 x $300,000).
- The state credit plus the federal deduction would total $205,000, or 51.25% of the value of the gift.
- If you assume $360,000 in avoided capital gains tax, at even 27%, you can add another $97,200 of tax savings, bringing the total to just over $300,000, or roughly 75% of the fair market value of the gift.

Private Foundation v.	Endowed Donor Advised Fund
• Donor appoints board and has direct control over investments and grants	Donor gives advice regarding grants which are approved by the organization's board.
• Cash gifts deductible up to 30% of AGI; gifts of appreciated stock/land up to 20% of AGI	Cash gifts deductible up to 60% of AGI; gifts of appreciated stock/land up to 30% of AGI
• 2% excise tax on investment income	No excise tax
• Legal/accounting fees, IRS filing fee for Form 1023; biennial Iowa secretary of state fees; requires staff or significant professional fees annually	No start-up costs; 1.5% annual total fee;
• fewer protections against mission drift	Community Board protects against mission-drift

Part 3

Paul’s Top Ten List for Philanthropists in Iowa

10 Great Charitable Planning Ideas

1. Make gifts during life to capture income tax deductions and so you can watch how the donee performs as a steward of your gift.

    1A. *Empower trustee or POA to advance charitable bequests*.

    1B. After 2017, consider lumping charitable gifts into every 2nd or 3rd year by using a non-endowed donor advised fund at a community foundation.

2. Fund lifetime gifts with appreciated property when possible.
3. Over age 70.5? Consider an annual $100,000 direct IRA rollover. Or for farmers, consider a gift of grain.
4. Make lifetime endowed gifts through Iowa community foundations and receive a 25% Iowa income tax credit plus a federal deduction. This can be combined with #2 or #3. (Read the fine print.)
5. Make lifetime gifts to public charities (rather than private foundations) to maximize deductions. An Endowed Fund at a community foundation can be very similar to a private foundation.
6. *In Iowa,* qualifying gifts of land or easements for permanent conservation generate 50% Iowa income tax credits plus federal deductions.

10 Great Charitable Planning Ideas, *Cont.*

7. Fund Charitable Gifts at death first with tax-deferred retirement assets. Make sure that the will or trust back-stops this bequest, however.
8. When selling a business or farm, consider first gifting part of it to a Charitable Remainder Trust benefiting your favorite charity. This allows you to (1) obtain at least some deduction in the year of the sale (except on zero-basis depreciated property); and (2) avoid capital gains tax in the year of sale (although you will recognize tax as distributions come out to you in the future from the trust). You will spread the taxable income over the term of your retained interest, potentially at lower rates than if you realized it all at once. Do your research before utilizing this concept with farm equipment or other unusual assets.
9. Wealthy families wanting to benefit loved ones and leave a philanthropic legacy can leave the "fruit" to their children or spouse and the "tree" to their favorite charity using a testamentary charitable remainder unitrust.
10. Consider a "zero estate tax" plan with the tax-free amount to kids and the rest to a charity (or a testamentary charitable lead trust).

The Zero Estate Tax Plan

- "I leave the Mount Vernon School Foundation $100,000 as a minimum charitable legacy. Thereafter, I leave the largest amount that can pass free of federal estate taxes to my only child, whom I love, if she survives me, and if not to her children *per stirpes*. I leave any residue beyond this tax-free amount to the School Foundation, to ensure that I pay no federal estate taxes by reason of my death. I never liked taxes, and this way I will die happy."

The Zero Estate Tax Plan

- The residue can alternatively go to a zeroed-out Charitable Lead Annuity Trust, which pays a fixed annuity (x% of the FMV of the residue on the date of death) to the school foundation for a period of years (at current interest rates, 5% for 28 years or 7% for 18 years, for example), and then leaves any residue to the testator's children. If the annuity is calibrated to equal the value of the residue, there is no taxable gift. If the residue's total return outperforms applicable IRS assumptions about interest rates (currently very low assumptions), then something passes tax-free to children at the end of the term.

Provision in Will Allowing Advancement of Charitable Gifts During Life

- If the will directs $100,000 to the school foundation, it should also indicate that this will be reduced by any lifetime gift earmarked as an "advance."
- The power of attorney designation must then authorize charitable gifts made as advances. (Or the revocable trust instrument).
- During a period of dementia, charitable gifts could be advanced by a surrogate to capture the income tax deductions that would otherwise be lost.

PROVISION TO GOVERN GIFTING DURING PERIOD OF INCAPACITY

- **Gifts From Grantor's Trust During Grantor's Incapacity.** Whenever Grantor is disabled or incapacitated, the Trustee may not make gifts from the Trust except as follows: The Trustee may make gifts from the Trust to any charitable organization, the gifts to which qualify for the Federal income and gift tax charitable deduction, and to which Grantor shall have previously made gifts, and pay Grantor's charitable pledges and dues in a manner that the Trustee shall determine reflects Grantor's general donative history, provided that no such gifts may exceed fifty percent of Grantor's adjustable gross income in any given year.

PROVISION TO GOVERN GIFTING DURING PERIOD OF INCAPACITY

- **Gifts From Grantor’s Trust During Grantor’s Incapacity.** The Trustee may also advance charitable and non-charitable pre-residual bequests under Grantor’s Revocable Trust, provided that there is a potential tax advantage in so doing and that such advances do not materially compromise the Trust’s ability to provide adequately for Grantor’s health, maintenance, and support. Charitable gifts shall not be considered advances unless earmarked as such.

ALLOWING ADVANCEMENTS OF BEQUESTS

- **a.** Each bequest made under this **Section** shall be reduced by the amount of assets passing at the Grantor's death to the entity receiving such bequest by way of beneficiary designation or otherwise outside of this Trust. Such bequest shall be further reduced by the amount of any lifetime gift made by the Grantor to the entity receiving such bequest if and only if such lifetime gift was expressly earmarked as an advance.

IDEAS FOR CHARITABLE BEQUEST LANGUAGE

- b. Subject to the dictates of subsections (a) above, the Trustee shall distribute to **Camp Courageous of Iowa, d/b/a Camp Courageous**, tax i.d. number 23-7210932, the amount of one hundred thousand dollars ($100,000), without restriction.

IDEAS FOR CHARITABLE BEQUEST LANGUAGE

- **c.** Subject to the dictates of subsections (a) above, the Trustee shall distribute to **Camp Courageous of Iowa, d/b/a Camp Courageous**, tax i.d. number 23-7210932, one hundred thousand dollars ($100,000), which shall be held as a permanent endowment for **Camp Courageous of Iowa, d/b/a Camp Courageous**, as part of the **Camp Courageous of Iowa Endowment Fund** or, if no such permanent endowment exists or can be created, then as a separate, segregated endowment, invested, administered, and governed by the Iowa Uniform Prudent Management of Institutional Funds Act, including Section 104 thereof governing endowed funds (or any successor provision).

IDEAS FOR CHARITABLE BEQUEST LANGUAGE

- **d.** Subject to the dictates of subsections (a) above, the Trustee shall distribute to the Greater Cedar Rapids Community Foundation, Cedar Rapids, Iowa, one hundred thousand dollars ($100,000), which shall be held as the John Brown Family Endowed Fund for **Camp Courageous of Iowa, d/b/a Camp Courageous,** tax i.d. number 23-7210932.

Part 4

BONUS MATERIALS:
Non-Tax Iowa Laws that Non-Profits Need to Understand

UPMIFA

- Uniform Prudent Management of Institutional Funds Act
- Iowa Code Chapter 540A
- Prudent Investor Rule Modernized and Proceduralized for Charitable Funds (Section 103)
- New Paradigm of "Endowment;" Historical Dollar Cost No Longer A Bright-Line Rule: But Fund Must be Invested and Spent with Permanence in Mind (Section 104)
- Delegation Must be Prudent and Agent Must be carefully monitored and guided (Section 105)
- Iowa-Specific Rules Regarding Modifying Restrictions (Section 106)

Section 103 of UPMIFA: Prudent Investor Rule

- Minimize Cost
- Duties of Loyalty and Care
- Duty to Invest Prudently
- Consider all relevant factors when making investment decisions (partial list included)
- Use special skill if you have it
- Modern Portfolio Theory; No Impermissible Asset Classes
- Diversify when and as prudent

Section 104: Appropriating Principal from Endowed Fund for Expenditure

- "Subject to the intent of a donor expressed in the gift instrument and to subsection 4, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established."
- "Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution."
- " In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, all of the following factors: *a.* The duration and preservation of the endowment fund . . . ."
- A donor can opt out of this provision, but essentially it would be difficult to do so without expressly citing 540A.104.

Delegation: Section 105 of UPMIFA

1. "An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in doing all of the following:

   a. Selecting an agent.

   b. Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund.

   c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation."

2. "An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated."

Section 106 of UPMIFA: Modification of Fund Agreements

An institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund:

1. With the Donor's consent; or
2. With Court approval after notice is given to the Attorney General, if the charity makes certain showings (impracticality/impossibility due to unforeseen circumstances, for example);

Section 106 of UPMIFA: Modification of Fund Agreements

3. *Without Court approval* after 60 days notice to the Attorney General if organization determines that the restriction has become unlawful, impracticable, or impossible <u>and</u> all of the following conditions exist: (1) more than 20 years have passed, (2) the fund is less than $50,000, and (3) the organization honors the general charitable purposes of the donor.

   a. Note: If a donor has given $100,000 or more to the organization, he or his surrogate has standing to enforce the restrictions for 50 years after the donor’s death. The surrogate must be named in the gift instrument.

   b. These provisions are unique to Iowa.

4. UPMIFA does not limit a court’s cy pres power or any power of modification existing by contract or by law.

Questions To Be Considered By The Board Of An Iowa Non-profit Organization With An Endowed Fund Governed By UPMIFA

1. [yes or no] *Should we continue delegating the investment function to ______________-, having considered:*

(1) General economic conditions.

(2) The possible effect of inflation or deflation.

(3) The expected tax consequences, if any, of investment decisions or strategies.

(4) The role that each investment or course of action plays within the overall investment portfolio of the fund.

(5) The expected total return from income and the appreciation of investments.

(6) Other resources of the institution.

(7) The needs of the institution and the fund to make distributions and to preserve capital.

Questions To Be Considered By The Board Of An Iowa Non-profit Organization With An Endowed Fund Governed By UPMIFA

1. [yes or no] *Should we continue delegating the investment function to ______________-, having considered:*

(8) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(9) Any specific limitation set forth in a gift instrument or in law

(10) The performance record of ______________ as our investment agent, both compared to industry benchmarks, and also in terms of its adherence to our general investment and risk-mitigation guidelines.

(11) The general policies of Iowa's Uniform Prudent Management of Institutional Funds Act (UPMIFA), and any other factors that may be relevant.

Questions To Be Considered By The Board Of An Iowa Non-profit Organization With An Endowed Fund Governed By UPMIFA

2. [yes or no] Should we make distributions from all Foundation funds at 5% of a 13-quarter rolling average, having considered:

a. The duration and preservation of the endowment fund.

b. The purposes of the institution and the endowment fund.

c. General economic conditions.

d. The possible effect of inflation or deflation.

e. The expected total return from income and the appreciation of investments.

f. Other resources of the institution.

g. The investment policy of the institution.

h. (11) The general policies of Iowa's Uniform Prudent Management of Institutional Funds Act (UPMIFA), and any other factors that may be relevant.

Charitable Trust Registration

- 633A.5107 Filing requirements.
  - Wholly Charitable Trusts
  - CRTs; CLTs
  - Within 60 Days of Creation
  - Annual Filing Requirement Thereafter (may be tax return)
  - Must be filed electronically: See **https://www.iowaattorneygeneral.gov/for-businesses/charitable-trust-registration/**

- **Form provided:**

https://www.iowaattorneygeneral.gov/media/cms/State_of_Iowa_Charitable_Trust_Regi_D091CD8D8E0AC.pdf

Iowa Attorney General's Role In Court Proceedings Involving Charitable Trusts

- Iowa Code Section 633A.5101-5108.
- Section 5104: The Attorney General is an interested person in a proceeding involving a charitable trust.
- 633A.5108: Attorney General has standing to investigate charitable trusts and initiate court proceedings involving charitable trusts.