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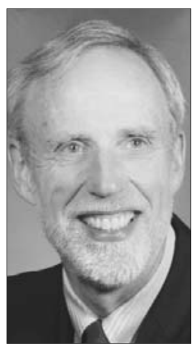
# More income from investments in troubled times



By DAVID C. PETTIG
Daily Record Columnist

In these difficult times, with investment returns at historically low levels, many of our clients are searching for safer investments with higher yields. There are several avenues to explore for those who have charitable intentions. A Charitable Remainder Annuity Trust, Charitable Remainder Unitrust and/or a Charitable Gift Annuity may be just what the financial doctor ordered.

**Charitable Remainder Annuity Trusts and Charitable Remainder Unitrusts**

These charitable trusts became part of the tax law in 1969. They are similar, but differ in significant ways. The similarities are as follows:

- An income interest may be retained by the grantor of the trust for his or her lifetime or for a period not to exceed 20 years from the date of creation of the trust. Often a charitable remainder trust will have more than one beneficiary. For example, it is not uncommon for the trust to be created by, and for, a married couple.
- A payment from the trust must be made to the trust beneficiary at least annually.
- The minimum annual rate must be equal to, or greater than, 5 percent, and equal to, or less than, 50 percent.
- At the end of the trust term, the trust remainder must be distributed to a qualified charity, which is defined by the Internal Revenue Code to mean a charity described in sections 170(c) and 2522. The following are examples of entities which can be trust remaindermen: our colleges and universities, the RPO, GEVA, a religious organization or a foundation such as the Rochester Area Community Foundation.
- The actual payment to the charitable remainder beneficiaries must be at least 10 percent of the value of the trust as of the date of creation.
- The trustee of the trust (who can be the grantor) must file annual tax returns and, more importantly, must keep very accurate records so that an accounting can be presented to the charitable remainder beneficiaries, to the New York attorney general and to the local Surrogate's Court following the death of the income beneficiary or beneficiaries.
- The grantor/creator of the trust is entitled to an income tax charitable deduction, the size of which depends upon the amount contributed, the payout rate, the term of the trust and the applicable federal midterm interest rate at the date of creation.

The differences between charitable remainder annuity trusts and charitable remainder unitrusts relate to how the annual payments are computed and whether or not additions to the trust are permitted. Assume for this purpose that a rate of 6 percent is selected and that the trust is funded with $100,000:

- The annual distribution from this charitable remainder annuity trust must be $6,000 per year, or 6 percent of the original value of the trust.
- The annual distribution from this charitable remainder unitrust must be 6 percent of the fair market value of the trust computed annually, generally on the first business day of each year. The distribution required to be made during the first year of the trust will be $6,000. If the market value of the trust increases to $120,000 during the year, for the second year the distribution will be $7,200 (6 percent of $120,000). On the other hand, if the market value of the trust decreases to $90,000, then the payout for the succeeding year will be $5,400 (6 percent of $90,000).

As you can see, the charitable remainder annuity trust guarantees level income without regard to changes in the value of the trust investments over the term of the trust. However, it is more likely to run out of money than the unitrust.

On the other hand, the unitrust payments will fluctuate over time in different degrees, depending upon the nature of the trust investments. The unitrust provides the opportunity to benefit from capital appreciation. It also carries the risk of lower payments in poor economic times, such as we have been having for over four years. The unitrust, by definition, will never run out of money. The distributions may be very small, but they will only be the percent-

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age of the ever-changing value of the trust's investments.

Finally, the law prohibits the addition of funds to a charitable remainder annuity trust. It does not prohibit additions to charitable remainder unitrusts.

**Charitable Gift Annuities**

It is my experience that neither a charitable remainder annuity trust nor a charitable remainder unitrust is generally economically viable unless it is funded with at least $100,000. The charitable gift annuity is appropriate for smaller gifts and provides many benefits. These include a fixed annual payment, no administration responsibility, the charitable deduction and the comfort in knowing that the funds left on hand at the annuitant's death will pass to a favorite organization. Often this is the donor's alma mater.

The charitable gift annuity is created by the transfer of funds to the charitable organization that will eventually become the recipient of the balance of the annuity following the death of the donor. That organization handles the paperwork and ensures that distributions are made to the donor on time. If the donor outlives his or her life expectancy such that the full value of the donation, and more, has to be paid to him or her, then the charitable organization is obligated to continue the payments throughout the donor's lifetime.

There is generally no cost to creating a charitable gift annuity, and any expenses are incurred by the charitable organization managing the assets. This is another reason the gift annuity may be preferable to a charitable remainder trust.

Charitable gift annuity payout rates are generally, but not always, lower than the rates offered by an insurance company. They are generally priced so that the charitable organization will eventually receive roughly one-half of the amount contributed to the purchase of the annuity. However, in the last four years, it is my understanding that charitable organizations have been increasing the payout rates and reducing the amount they eventually expect to receive. For January 2012, the American Council on Gift Annuities has recommended a rate of return of 4.4 percent for an individual aged 60 or 61. The recommended rate for a 70-year-old is 5.1 percent and for an 80-year-old is 6.8 percent.

The bottom line is that a rate of return in excess of government bonds and certificates of deposit can be attained with investment in all of the vehicles. Each of these is worthy of considering by those who have a need for additional income and wish to benefit one or more charitable organizations.

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