



Evaluate Charitable Giving Opportunities

Business Owner Action Item: Engage Hibiscus Legal to execute a charitable giving plan.

Why is This Important? Charitable giving can also be a valuable part of the wealth succession plan. Understanding some basic ways to give can add significant economic efficiency to benefit the business owner for the long-term.

In My Experience: Charitable giving is important for many of our clients.

Option 1: Donate to a Public Charity (“PC”)

Deductible contributions?	Yes
Contribution limit?	60% of AGI for cash 30% of AGI for noncash
Donor controls grantmaking?	No
Donor controls investment decisions?	No
Donor manages operations and administers organization?	No
Annual distribution requirements?	No
Organization subject to income taxes?	Generally, no
Organization subject to excise tax for prohibited transactions?	Generally, no
Organization required to file an annual tax return?	Yes (Form 990)

- Donations to a PC is a good option for business owners that have identified a PC that is consistent with their charitable giving plan.

Option 2: Organize a Private Nonoperating Foundation (“PNF”)

- PNFs are also referred to as “grant-making foundations” because they do not have operations and do not engage in charitable activities.
- A PNF must annually distribute an amount equal to 5% of its assets to further a charitable purpose.
- Most PNFs satisfy the annual distribution requirement by making distributions to public charities.
- A PNF usually has a President, Secretary, Treasurer, and Board of Directors.
 - The business owner and the business owner’s family members usually govern and operate the PNF.

Deductible contributions?	Yes
Contribution limit?	30% of AGI for cash 20% of AGI for noncash
Donor controls grantmaking?	Yes
Donor controls investment decisions?	Yes
Donor manages operations and administers organization?	Yes
Annual distribution requirements?	Yes (5% of assets)
Organization subject to income taxes?	Yes (1.39% excise tax on net investment income and an income tax on unrelated business income)



Organization subject to excise tax for prohibited transactions?	Yes. Potential excise tax due for engaging in acts of “self-dealing,” having “excess business holdings,” and making “jeopardizing investments” or “taxable expenditures.”
Organization required to file an annual tax return?	Yes (Form 990-PF)

In My Experience: PNFs are the best option for most of our clients because PNFs are low maintenance.

Option 3: Private Operating Foundation (“POF”)

- POFs have operations and engage directly in charitable activities.
- POFs must annually meet an *income test* and one of three alternative tests: *assets test*, *endowment test*, and *support test*.
- A POF usually has a President, Secretary, Treasurer, and Board of Directors.
 - The business owner and the business owner’s family members usually govern and operate the POF.

Deductible contributions?	Yes
Contribution limit?	60% of AGI for cash 30% of AGI for noncash
Donor controls grantmaking?	Yes
Donor controls investment decisions?	Yes
Donor manages operations and administers organization?	Yes
Annual distribution requirements?	No, but subject to income test
Organization subject to income taxes?	Yes (1.39% excise tax on net investment income and an income tax on unrelated business income)
Organization subject to excise tax for prohibited transactions?	Yes. Potential excise tax due for engaging in acts of “self-dealing,” having “excess business holdings,” and making “jeopardizing investments” or “taxable expenditures.”
Organization required to file an annual tax return?	Yes (Form 990-PF)

In My Experience: Most of our clients do not use POFs because POFs require day-to-day operations and must annually meet an income test and one of three alternative tests, which are more difficult than a PNFs annual 5% distribution requirement.

Option 4: Donor Advised Fund (“DAF”)

- A DAF is a charitable investment account established at a public charity.
- A DAF allows a business owner to make a charitable donation, receive an immediate income tax deduction, and then recommend grants from the fund over time.

Deductible contributions?	Yes
Contribution limit?	60% of AGI for cash 30% of AGI for noncash



Donor controls grantmaking?	No, but donor can advise
Donor controls investment decisions?	No. Donor may choose investment plan, but sponsoring organization has control.
Donor manages operations and administers organization?	No. Donor pays a fee to sponsoring organization to provide administrative services.
Annual distribution requirements?	Generally No. DAFs may set their own requirements
Organization subject to income taxes?	No, unless there is unrelated business income
Organization subject to excise tax for prohibited transactions?	Yes. Potential excise tax on excess business holdings, taxable distributions, and excess benefit transactions.
Organization required to file an annual tax return?	No. An annual filing by sponsoring organization, not each separate donor advised fund.

In My Experience: Most of our clients either use a PNF or a DAF.

Transaction: Transfer Stock in the Company to a PNF, POF, or DAF (“Foundation”)

- The business owner should donate stock in the Company to a Foundation prior to the sale.
- The business owner receives an immediate income tax deduction.
- When the stock is sold in the sale, the Foundation does not recognize income or capital gains tax.
- After the sale, the Foundation has cash to engage in charitable activities.

In My Experience: Combining charitable giving with the sale of the Company is tax-efficient.