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Charitable Giving Options for 2018 and Beyond

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Tama has a tax practice focused on both the domestic and international aspects of estate planning and family wealth transfer and tax exempt organizations. Tama began her legal career with Vinson & Elkins in the Probate, Trusts & Estates Group of the Tax Section. After almost 10 years at Vinson & Elkins, Tama continued her legal practice with Klosek Howes LLP and formed Klosek & Associates PLLC in June 2013. Tama has developed significant experience in income, nonprofit (including private foundations), estate, gift, trust and generation-skipping transfer taxation and marital property planning. Tama is a graduate of Harvard Law School and earned her undergraduate degree in Economics with honors from Columbia University. Tama is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization and has been widely recognized in Houston and in the State of Texas by her peers, as well as her clients, as an outstanding attorney in her field. She has many local and regional professional affiliations and has presented seminars on a range of topics related to her area of expertise to numerous groups, including Houston Estate and Financial Forum, Houston CPA Society; South Texas College of Law Wills & Probate Institute; Planned Giving Council of Houston Gulf Coast Regional Gift Planning Conference; Houston Bar Association, Probate, Trusts and Estates Section; Estate Forum Generation X; Houston Wealth Advisory Forum; and various for profit and nonprofit organizations. Tama is also a Council Member of the Houston Bar Association, Probate, Trusts and Estates Section and a Member of the Greater Houston Community Foundation Professional Advisors Council. Tama enjoys spending time with her husband and three sons, ages 14, 12 and 2, cooking, reading, running and relaxing at the beach.

Discussion Outline

- General considerations when counseling clients on charitable giving
  - 2017 Tax Act
  - Due Diligence and Donee Status
- Overview of Select Charitable Giving Options
  - Establishing a Donor Advised Fund
  - Private Foundations
  - Supporting Organizations
  - IRA Charitable Rollover
- Additional Lifetime and Testamentary Giving Options
- Concluding Thoughts

2017 Tax Act

- Key Charitable Provisions
  - Deduction limit for cash gifts to charity increased from 50% of AGI to 60%
  - 1.4% excise tax applies to net investment income earned on endowments by private colleges and universities with at least 500 tuition paying students when endowments exceed $500,000 per student and 50% of its students are located in the U.S.
  - 21% excise tax applies on remuneration in excess of $1 million for the 5 highest compensated employees
    - In 2014, 2,700 nonprofit employees were paid more than $1 million—mostly “eds and meds”
    - 78 were college football coaches with salaries ranging up to $11 million
    - HealthLeaders Media reports that around 16% of all nonprofit hospitals will be required to pay excise tax; nonprofits restructuring so all highest paid employees employed by one entity since excise tax only applies on 5 highest compensated employees
  - 80% charitable deduction allowed for payments for the right to purchase tickets to athletic events at colleges and universities is repealed

2017 Tax Act

- Income and Estate Tax Provisions
  - Personal exemptions have been eliminated and there is an increase in the standard deduction to $12,000 for single filers, $18,000 for heads of households and $24,000 for joint filers
  - Itemized deduction for state and local taxes is limited to $10,000
  - Repeal of "Pease" limitation on charitable deductions that affect high income individuals
  - Mortgage deduction does not change, but the limitation on the mortgage amount is now $750,000 (for debt after 12/15/2017), down from $1,000,000 limit; deduction for home equity loan interest eliminated
  - Estate, gift and GST tax exemptions doubled to $11.18 million for individuals; $22.36 million for couples (expires after 2025)

2017 Tax Act

- Impact of Income and Estate Tax Provisions
  - Treasury estimates filers with itemized deductions will be reduced from around 30% to 13%
  - Charities are concerned that there will be a reduction in charitable giving because there is no income tax benefit for 87% of all individuals
    - Elimination of itemized deductions estimated to shrink giving to exempt organizations by $13 billion or more per year and cost in excess of 200,000 nonprofit jobs (Source National Council of Nonprofits)
    - Many not concerned about reduced giving and believe estimates overvalue the impact of charitable deduction on philanthropy
    - ***Ethical question for planned giving advisors/development officers***—are you required to inform donors that there may be no tax benefit to them if they are no longer itemizers?
  - Limitation on state and local tax deductions will pressure state and local governments to enact tax and spending cuts and elimination of programs and services may increase burden on nonprofits
  - Estate tax is an importance source of revenue for exempt organizations—doubling of the exemption is estimated to reduce charitable giving by $4 billion per year (Source National Council of Nonprofits)

Due Diligence and Donee Status

- Prior to making a meaningful charitable gift, due diligence is important
  - Large gifts to charity are significant investments and should be treated similarly
  - Charities are required to make certain documents available for public inspection and should be prepared to promptly respond to requests
- Organizational Documents and Exempt Status
  - Consider entity form and confirm standing under state/national law
  - Review organizational documents and confirm identifiable charitable mission and purpose
  - Confirm tax exempt status and review Forms 990 and Form 1023 (for newer organizations)
  - For international grant making additional due diligence may be required
    - § 170 (c) deductible charitable contributions for income tax purposes may be made generally only to organizations organized in the US unless otherwise specified by treaty
    - Confirm existence of US "friends of" organization to preserve income tax charitable deduction

Due Diligence and Donee Status

- **Structure and operations**
  - How does charity (or portion of charity relevant to proposed gift) operate on a day-to-day basis
  - Confirm established procedures to comply with all federal and state laws
    - Formalized policies and corporate best practices similar to for profit organizations
    - Regular meetings of governing bodies
    - Legal, accounting and annual audit
    - Established Conflict of Interest Policy, Spending Policy, Investment Policy, Document Retention Policy and Whistleblower Policy
      - Consider other policies that may be appropriate

Due Diligence and Donee Status

- **Website and reputation**
  - Review of charity's website
    - Current with appropriate resources, including options for charitable gifts
      - Charitable gifts and grants are the revenues for charities that do not charge for services
      - Websites should be professional and facilitate and encourage giving
  - "Google it"
    - Reputation is important and a simple Google search can often provide significant amount of information, but there are other resources for performing non-profit due diligence (e.g. State Attorney General, GuideStar, local community foundation)
- Lawsuits and vulnerability of charitable gifts
  - Insurance and structure for protecting charitable assets
  - Direct gifts to separate endowment organizations that support operating organizations
  - Solvency and audit statement of liability

Due Diligence and Donee Status

- Gift agreements and separate counsel
  - Charity and charity's attorneys do not represent donor and important for all advisors to recognize and fully disclose this, especially if charity's forms are being used or if charity's attorney's are communicating with donor
  - Donor's and charity's interests are not always aligned
    - Enforceability, timing of payments, property that may be used to satisfy charitable pledges, valuation of property contributed and credited towards charitable pledges and naming rights are a few of the more significant issues we regularly address in gift agreements
  - Carefully thought and negotiated agreements protect the donor and charity and should be encouraged

Overview of Selected Charitable Giving Options

- Individuals may wish to organize and structure their philanthropy for a variety of reasons
  - Desire to become more engaged in philanthropy and effect change
  - Legacy
  - Family values
  - Income tax
  - Estate tax
- Structure vs. impulse and responsive giving
  - Often times cash gifts made to charities without any cohesive giving strategy
    - Defining a charitable mission and setting limits on impulse and responsive giving
    - Donors should consider gifts of low basis property that is not subject to the “related use rule” to maximize value of income tax charitable deduction
  - Lack of structure makes certain persons vulnerable for continuous requests for donations and a feeling of “donor remorse”

Overview of Selected Charitable Giving Options

- Establishing a Donor Advised Fund (“DAF”)
- Other 501(c)(3) Exempt Organizations
  - Private Foundation (“PF”)
  - Supporting Organization (“SO”)
  - Public Charity
- IRA Charitable Rollover

Establishing a Donor Advised Fund

- A DAF is a separately identified fund or account that is maintained and operated by a section 501(c)(3) organization, which is called a sponsoring organization (Section 4966(d))
- Each DAF account is composed of contributions made by separate donors
- Once the donor makes the contribution, the sponsoring organization has legal control over it
  - The donor, or the donor's representative, retains advisory privileges with respect to the distribution of funds and the investment of assets in the account pursuant to an agreement with the sponsoring organization
- DAF provides affordability while allowing for other important goals of charitable individuals
  - Donors only need a minimum amount, as determined by the sponsoring organization, to set up a DAF
  - Some community foundations have minimums as low as $10,000 and many also offer “acorn” funds, allowing donors to build up to the minimum

Establishing a Donor Advised Fund

- What payments are prohibited from DAFs under § 4966?
  - Distributions to an individual are prohibited
  - Distributions to any organization if not for a charitable purpose
  - Other payments that are not prohibited but that will be "taxable distributions" unless expenditure responsibility is followed include:
    - Distribution to an organization that is not described in § 170(b)(1)(A) – (notably non-charities and PFs)
    - Distributions to Type III non-functionally integrated SOs
    - Any SO if the organization that is being supported is controlled by either the donor or an advisor appointed by the donor

Establishing a Donor Advised Fund

- Due diligence important for establishing DAF
  - Donors should carefully consider viability of DAF and safety of assets
  - National Heritage Foundation filed for bankruptcy in 2009 and $25 million in donor assets over 9,000 donor advised funds were lost under reorganization plan approved by Bankruptcy Court
- Donors should also consider DAF fees and succession planning with respect to DAF
  - Prior to selecting a DAF with which to establish and account donors should consider whether their long-term philanthropic goals can be met and should tailor the fund agreement accordingly
- DAFs can be efficient alternative to a stand-alone 501(c)(3) and can work in tandem with existing charitable organizations

Other 501(c)(3) Exempt Organizations

- § 501(c)(3) describes the most common form of exempt organizations
  - Corporation, community chest, fund or foundation that is organized and operated <u>exclusively</u> for religious, charitable, scientific, literary or educational purposes, testing for public safety, the prevention of cruelty to children or animals, or promotion of national or international amateur sports competition
- Requirements for Exempt Status
  - Organizations must be organized and operated exclusively to further a proper exempt purpose;
  - No part of the net earnings of the organization inures to the benefit of any private shareholder or individual; and
  - No substantial part of the organization's activities consists of carrying on propaganda or otherwise attempting to influence legislation and the organization does not participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office

Private Foundations

- PFs qualify for tax exempt status under section 501(c)(3)
- PFs typically have a single major source of funding, usually from one donor or corporation, rather than from many sources
- Primary activity of most PFs is grantmaking to other charitable organizations instead of the direct operation of charitable programs
- PFs are subject to various excise taxes and rules to which public charities are not exposed

Supporting Organizations

- SO is a 501(c)(3) organization which is:
  - A public charity (not a PF) because it has a specified relationship with another public charity (the supported organization)
  - "Piggy backs" on the exempt status of another public charity
  - Described in § 509(a)(3)
- SO status is important because Type I, Type II and Type III Functionally Integrated SOs are not subject to all of the restrictions applicable to private foundations
- SOs demonstrate a strong relationship with the organization they support. The strong relationship enables the supported organization to oversee the operations of the SO. Therefore, the SO is classified as a public charity, even though like a PF it may be funded by a small number of donors.

Supporting Organizations

- SO must be organized and operated exclusively for purposes described in § 501(c)(3)
- SO must also be organized and operated exclusively to support specified supported organizations
- SO must have one of three relationships with the supported organizations, all of which are intended to ensure that the supporting organization is responsive to the needs or demands of the supported organization

Private Foundations and Public Charities

- § 509(a) defines a private foundation as any domestic or foreign organization described in § 501(c)(3) other than four types of § 501(c)(3) organizations
  - Result: All 501(c)(3) organizations are private foundations unless the organization demonstrates otherwise
- Four types of organizations are excepted from private foundation status:
  - (1) organizations conducting certain favored types of activities such as churches, educational institutions and hospitals
  - (2) organizations receiving a substantial amount of their support from the general public or from governmental entities;
  - (3) organizations excluded from private foundation treatment due to their close association with other organizations treated as other than private foundations (known as "supporting organizations"); and
  - (4) organizations organized and operated exclusively to test for public safety.
- Considering significant restrictions applicable to private foundations, preferable for an exempt organization to qualify as a public charity
  - Only benefit to private foundation vs. public charity is donor control

Private Foundations and Donor Advised Funds

- Pension Protection Act of 2006 significantly altered rules governing DAFs
  - PF excess business holdings rule apply to DAFs as if they were private foundations (§ 4943(e))
    - This affects contributions of closely held securities by donors since they likely own more than 20% of the business enterprise
  - Also imposes taxes on donor advisor or person benefitting from a recommendation that the DAF distribute any amount that results in such person or a disqualified person receiving more than an incidental benefit (§ 4967)
    - Tax is 125% of the benefit
  - Imposes penalties on the sponsoring organization and fund managers if certain distributions are made out of a DAF (§ 4966)

Private Foundations and Donor Advised Funds

- IRS Notice 2017-73—Describes the direction that new tax regulations governing DAFs will likely take
  - DAFs will be able to pay pledges (whether legally binding or not) made by the DAF's donor, provided that certain conditions are met.
  - IRS intends to impose excise tax penalties on bifurcated grants.
    - What is a bifurcated grant?
      - For example, to sponsor a table for 10 at a fundraising dinner the donor pays $10,000. $2,000 is for food and $8,000 is a charitable gift. Many donors offer to pay the $2,000 and recommend that a grant from the DAF pay the other $8,000.
  - Notice 2017-73 concludes that this is a situation where it is inclined to impose a penalty on (a) the donor and (b) employees who knowingly approve the grant from the DAF. § 4967.
  - Notice 2017-73 also seeks to target use of DAFs to avoid large grants designed to avoid the 2% public support limitation

Organizational Issues

- DAF
  - Does not require formation of a separate legal entity
  - Tax status is result of public charity which sponsors the DAF
  - Fees paid to sponsoring organization for administration and investment management
  - No separate annual return required for individual fund; sponsoring organization files Form 990 for all DAFs
- Public Charities, PFs and SOs
  - Requires formation of separate legal entity
    - Charitable Trust
    - Nonprofit Corporation
  - Tax Status
    - Organization must request recognition of exempt status by filing Form 1023 and must file annual returns on Form 990 or Form 990-PF
  - Ongoing costs of operation and compliance

Comparison of Charitable Options—Tax and Cost

	Public Charity	Private Foundation	Supporting Organization	Donor Advised Fund
Income Tax Deductions				
Cash Gifts	60%	30%	60%	60%
Long-Term Capital Gains Property	30%	20%	30%	30%
Excess Donations May Be Carried Forward 5 Years				
Amount Deductible				
Publicly Traded Stock Held Longer Than 1 Year	FMV	FMV	FMV	FMV
Other Appreciated Property (including restricted stock subject to related use rule)	FMV	Basis	FMV	FMV
Operating Rules				
Excise Tax on Investment Income (1% or 2%)	No	Yes	No	No
Minimum Payout Requirement (5%)	No	Yes	85% of NI or 3.5% only for Type III non-functionally integrated SOs	Possible
Restrictions on Self Dealing	No	Yes	No	Yes
Restrictions on Excess Business Holdings	No	Yes	No	Yes
Prohibitions on Grants to Support Lobbying	Limited (501(h))	Yes	Yes	Yes
Restrictions for Gifts to Non-Public Charities	No	Yes	Yes	Yes
Accounting and Tax Preparation				
Separate Tax Return Required	Yes	Yes	Yes	No
Tax Returns Available to Public	Yes	Yes	Yes	Only for the DAF–not the donor
Start-up Costs and Annual Expenses				
Start-up Costs	Yes	Yes	Yes	No
Average Administrative Expenses	Variable depending on activity	Up to 15% of charitable budget (COF median 8.6%)	Variable depending on Type	0.40% - 1.5% (Fund dependent)
Investment Management	Variable	Variable	Variable	Variable

Comparison of Charitable Options—Donor Control

	Public Charity	Donor Advised Fund	Supporting Organization	Private Foundation
Description	Stand alone non-profit organization.	Charitable gift account established with a sponsoring organization, such as a community foundation or a national financial institution, that qualifies as a public charity.	Charitable organization formed to support one or more public charities or a class of public charities. Funds may come from one or many sources.	Charitable organization established by a single donor or a donor family. Funds primarily come from the donor or the donor's family.
Donor Anonymity	Yes	Yes	Maybe	No
Donor Control Over Charitable Contributions and Grantmaking	None. Donor may be able to restrict gift pursuant to a gift or pledge agreement.	Limited. Donor may recommend grants to DAF but DAF controls all funds contributed to the account and can refuse to make a requested grant.	Limited. Donor and donor's family cannot control the governing board and contributions may only be made to supported organization or organizations.	Yes. Donor and governing board which may be controlled by donor's family control all grantmaking decisions. However, all grants must be made to avoid PF excise taxes.
Donor Control Over Investments	None. Once the contribution is made the Public Charity controls all investment decisions; however, donor and donor's family can serve on the governing board and make investment recommendations. .	Limited. Donor may be able to recommend investments for the account from the sponsoring organization's available investment options or recommend outside investment advisor.	Limited. Donor and donor's family cannot control the governing board but can serve on the governing board and make investment recommendations.	Yes. Donor and governing board which may be controlled by donor's family control all investment decisions. However, PFs are subject to excise taxes on excess business holdings and jeopardizing investments.

IRA Charitable Rollover

- The Pension Protection Act of 2006 (PPA) permitted individuals to roll over up to $100,000 from an individual retirement account (IRA) directly to a qualifying charity without recognizing the assets transferred to the qualifying charity as income
  - Law became permanent on December 18, 2015
- What is an IRA Charitable Rollover?
  - "Qualified charitable distribution" or "QCD" is money that individuals who are 70½ or older may direct from their traditional IRA to eligible charitable organizations
  - Applies to IRAs only—not 401(k)s or other retirement accounts
  - Annual cap of $100,000
  - Individuals may exclude the amount distributed directly to an eligible charity from their gross income
- What is the benefit of QCD?
  - Donors benefit by not having to recognize as income the amount contributed directly from their IRA to a qualifying charity
  - Because donors exclude this contribution from their gross income, they cannot take a charitable contribution deduction for the contribution

IRA Charitable Rollover

- Organizations eligible to receive QCDs
  - Most contributions to public charities, other than SOs, are considered qualified charitable distributions
  - DAFs do not qualify to receive QCDs even if operated by a public charity
    - Separate funds of a community foundation which are not DAFs should qualify to receive QCDs
  - Private operating foundation or a private non-operating foundation that elects to meet the conduit rules in the year of the distribution can also receive QCDs
  - Split interest trusts, such as charitable lead trusts and charitable remainder trusts, are not eligible to receive QCDs
      - Any contribution donors make in return for a charitable gift annuity also would not be eligible for the tax-free treatment

IRA Charitable Rollover

- Donor must be 70 ½ or older
- Limited to a maximum of $100,000 in any one year as a QCD
  - Multiple transfers and multiple recipients are permissible as long as aggregate QCDs are not in excess of $100,000 per year
  - If donors wish to take funds from their IRA to contribute more than $100,000 to charity, they cannot exclude the excess from gross income
- IRA funds can be contributed to DAF but will not be a QCD
  - Donors must recognize contributions from IRAs to DAF as income and then must calculate their charitable deduction according to the general tax rules subject to percentage limitations

Additional Lifetime and Testamentary Giving Options

- Lifetime gifts
  - Lifetime gifts can be more effective than testamentary gifts because the income tax charitable deduction is available in addition to the estate and gift tax charitable deduction
- Outright Gifts Both the income tax and gift tax charitable deductions are available to the donor who makes an outright gift of property to charity.
  - Cash An outright contribution of cash is the simplest form of charitable gift. However, this form of gift is the least tax advantaged form.
  - Appreciated Securities If the donor makes a gift of appreciated securities held for more than one year, the donor will not be required to pay capital gains tax on the appreciation but will be entitled to a full fair market value charitable deduction. Thus, the after-tax cost of making a charitable contribution of appreciated securities is less than the after-tax cost of an outright contribution of cash.
- Retirement Plan Assets Since retirement plan assets are subject to income, estate and generation-skipping transfer taxes, the value of qualified plan assets can be significantly reduced when transferred to family members at the plan participant's death. However, a donor can avoid income, estate and generation-skipping transfer taxes on retirement plan assets by naming one or more charities as the beneficiary of these plans. It may be necessary to obtain spousal consent to the designation of a charity as a beneficiary of the plan.

Additional Lifetime and Testamentary Giving Options

- Life Insurance
  - Transfer Existing Policy If a donor irrevocably transfers all of the donor's ownership rights with respect to an existing life insurance policy, the donor will be entitled to an income tax and gift tax charitable deduction for (i) the lesser of the fair market value of the policy or the donor's cost basis in the policy and (ii) any future premium payments. A gift of life insurance can provide for substantial leverage over a cash gift.
  - Donate a New Policy A donor who would like to make a significant contribution but does not have the available funds may wish to donate funds to a charity to enable the charity to purchase an new insurance policy on the donor's life. The donor will receive an income tax and gift tax charitable deduction for the donation of the initial and future premium payments.
  - Funding Future Premiums Gifts for future premium payments may be made with appreciated marketable securities.
  - Name a Charity as Primary or Secondary Beneficiary A donor can name a charity as primary beneficiary or secondary beneficiary of an insurance policy on the donor's life. There is no current income or gift tax charitable deduction; however, the donor's estate will receive an estate tax charitable deduction and the death benefit will pass tax-free to the charity.
  - Insurable Interest If the insurance is not governed by Texas law, the donor should confirm that the charity has an insurable interest in the donor's life under the governing state law.

Additional Lifetime and Testamentary Giving Options

- Charitable Gift Annuities A charitable gift annuity is a simple contract between the donor and a charity. In exchange for the donor's contribution, the charity promises to make annuity payments for life to annuitant(s). The donor may claim an income and gift tax charitable deduction equal to the value of the transferred property less the present value of the annuity payments. A portion of the annuity will be subject to income tax when paid.

- Bargain Sale A bargain sale of property occurs when property is sold to a charity for an amount less than its fair market value. The bargain sale is both a sale and a gift—the gift element being the difference between the sales price paid by the charity and the fair market value of the property being transferred. The donor/seller will be required to recognize gain on the sale portion and the gift portion will be allowed as an income tax and gift tax charitable deduction. The donor/seller should be careful to disclose donative intent in the sale documentation.

Additional Lifetime and Testamentary Giving Options

- Loans to Charities No income tax deduction is allowed for a loan of property to a charity because this is not a transfer of an undivided fraction of the owner's entire interest in the property. A loan of property will not be subject to gift tax, and the value of the transferred property will be included in the donor's estate if the donor dies during the "term" of loan.
- Charitable Remainder Trusts Charitable remainder trusts provide for the distribution of a specific amount (either an annuity or a percentage, known as a "unitrust") at least annually to one or more non-charitable beneficiaries with the remainder to charity. The charitable remainder trust is exempt from income tax, so the trustee may sell assets without generating any capital gains tax. The grantor of a charitable remainder trust may take an income tax and gift tax charitable deduction based on the present value of the remainder interest which will pass to charity.
  - CRUTs will become more popular as interest rates rise.
- Charitable Lead Trusts A charitable lead trust is the reverse of a charitable remainder trust—a charity, receives a portion of the trust property (annuity or unitrust percentage) for a specified term, and the remainder passes to the donor or another designated beneficiary. However, unlike the charitable remainder trust, the trust is not tax exempt but may be entitled to a deduction under § 642(c). Deduction depends on grantor trust status.
  - CLATs still attractive at current AFR (3.2% April 2018)

Additional Lifetime and Testamentary Giving Options

- Auctions The amount paid for an item at a charity sponsored auction will not be deductible unless the bidder pays in excess of fair market value of the item.
- Raffles A purchase of a raffle ticket is not deductible as a charitable gift.
- Complete Testamentary Charitable Transfers If an individual transfers property to charity at death, the deceased individual's estate will receive an estate tax charitable deduction to the extent of the fair market value at the date of death.
- Partial Testamentary Charitable Transfers
  - Testamentary Charitable Remainder Trust
  - Testamentary Charitable Lead Trust

Concluding Thoughts

- IRS audits
  - Correspondence audits in certain regions of country targeting donor acknowledgment/substantiation of charitable donations
    - Required even from donor's own foundation
- Form 8283 and donations of property other than marketable securities
  - Donors must be knowledgeable about appraisal requirements and Form 8283
  - Organize charitable giving to minimize appraisal and other transaction costs associated with giving property other than marketable securities
    - "Appraisal risk" to value of charitable deduction if purchase item that charity requests for charitable purpose—instead donate appreciated marketable securities and work with charity on acquisition of item
  - *Reri Holdings I, LLC v. Commissioner*, 149 T.C. No 1 (7/3/2017), the Tax Court held that the taxpayer's omission from Form 8283 of its adjusted basis in the contributed property justified denial of its charitable income tax deduction