



# GIVING THROUGH LIFE INSURANCE



## Making the Most of Life Insurance

Many of us have one or more life insurance policies. Life insurance is traditionally purchased for several reasons- to provide security for loved ones, as a time-honored savings plan or as a means to provide funds expected to be needed for the payment of estate taxes and other estate settlement expenses.

Life insurance can also offer a convenient way to fund meaningful charitable gifts both now and as part of your long-term estate plan.

## Considering Gifts of Life Insurance

Ask yourself the following questions to determine whether a gift of life insurance could play a role in your charitable giving plans:

- Do you have a policy on your life that was intended to protect a spouse who no longer needs it or children who are now financially independent?
- Do you have life insurance purchased to pay estate taxes? Current federal tax law has resulted in reduced estate taxes for many. If estate taxes are now less of a concern for you, the proceeds from life insurance originally purchased for the payment of taxes may instead be devoted to purposes that are more in keeping with your wishes. These funds may offer a way to make gifts to charitable interests and others that may not have seemed possible.
- Do you have a policy purchased to complete payment of a mortgage or other debts that no longer exist?

- Do you have a policy you bought to help provide retirement income? Have you since accumulated adequate amounts in other retirement plans?
- Do you have a policy you bought to help ensure that money would be available for your children's education? If you used other funds to pay for their education, is this insurance still needed?
- Do you have a policy to protect a business that no longer needs such protection?

Although many people have excess life insurance, they often do nothing about such obsolete or perhaps forgotten insurance coverage. Compare your life insurance policies with your present needs. Then consider how they may be used to help you meet other goals.

## Seven Ways to Give Using Life Insurance

Each method of giving life insurance described here helps meet a different estate or financial planning goal. Consider whether any of these ways to give life insurance may be applicable to your situation.

### **1. *Name a charitable recipient as beneficiary of a policy you own in one of the following ways:***

- As primary beneficiary to receive part or all of the policy proceeds along with your spouse and/or other loved ones.
- As secondary beneficiary to receive part or all of the proceeds if one or more primary beneficiary(ies) have predeceased you.
- As final beneficiary to receive part or all of the proceeds if all other beneficiaries have predeceased you.

**2. *Purchase a new policy.*** This can be a convenient way to make a substantial gift in an affordable and tax-efficient manner. If the charitable beneficiary is the owner of the policy, you may deduct the amount of premiums paid on the policy when you itemize state and/or federal tax deductions.

**3. *Gift a paid-up life insurance policy you already own by transferring ownership and beneficiary designation to the charity.*** In general, you may deduct the lesser of the policy's fair market value or your cost basis in the policy (typically the total premiums paid). The deduction for this type of non-cash charitable gift is usually limited to 50% of your adjusted gross income (AGI). If the amount exceeds that limit, the unused portion may generally be carried forward for up to five additional tax years.

**4. *Give a policy on which you are still paying premiums.*** If a charitable recipient is named irrevocable owner and beneficiary, you may deduct future premium payments as charitable contributions, as well as an amount equal to the approximate cash value\* at the time the gift is made.

**5. *Make charitable gifts of other assets and purchase a policy benefiting your heirs to replace the money or other property given.*** This method merits serious consideration by those who want to make significant charitable gifts without necessarily reducing what their heirs will receive. The tax savings realized as a result of a gift of cash or other

property may be used to help offset the cost of insurance purchased to replace the assets you donated.

**6. Purchase a policy on the life of another person, with proceeds devoted to charitable purposes..**

This can be an excellent way to give life insurance under appropriate circumstances. As with other policies, premiums are deductible when a qualified charity is named as the irrevocable owner and beneficiary.

**7. Assign policy dividends to charitable interests.**

This can be a convenient way to make a tax-deductible gift each year.

**In Summary**

As you can see, life insurance offers tremendous flexibility for those who wish to include charitable gifts as part of their long term financial and estate planning. To summarize the benefits:

- *A life insurance gift is immediate.* The proceeds are paid in cash shortly after the death of the insured person. Life insurance gifts generally are not subject to the costs and delays of the probate process.
- *A life insurance gift is convenient.* Changing the beneficiary of a life insurance policy may be simpler and more cost-effective than changing the terms of a will, creating a trust or arranging for other forms of giving.
- *A life insurance gift is private.* A life insurance policy is not a matter of public record, so privacy in giving may be assured.

- *A life insurance gift is economical.* Under certain circumstances, the size of a person's gift can actually be larger than the original cost. And when a qualified charity is the irrevocable owner and beneficiary, the premiums paid on the policy are tax deductible gifts. Check with your advisor to confirm tax deductibility in your case.

<b>Summary of Tax Benefits</b>	
<b>If you...</b>	<b>You may deduct...</b>
Give paid-up policy	The lesser of the policy's fair market value (FMV) or your cost basis (typically close to the cash surrender value)
Give policy on which you are still paying premiums	The lesser of FMV or cost basis at the time of gift, plus future premiums (if charity named owner & beneficiary)
Purchase new policy for charity	Premiums (if charity is named owner)
Assign dividends to charity	Value of dividends
Buy policy to guarantee pledge to charity	Premiums (if charity is named owner & beneficiary)
Name charity as primary, secondary, or final beneficiary on policies you own	Premiums are not deductible unless policy is owned by charity

**Conclusion**

Charitable giving and life insurance have gone hand-in-hand for many years. Today, as an asset owned by most American families, life insurance can offer a wonderful way to carry out your charitable intentions especially in the case of an

insurance policy purchased a number of years ago and no longer needed for its intended purpose.

State laws govern and regulate the issuance and operation of life insurance policies. These laws can affect the deductibility of gifts for federal income tax purposes. Check with your life insurance representative or other advisors for additional information. They may find the following section to be of particular interest.

## Technical Advisory Section

The preceding pages have discussed many of the benefits and methods of making charitable gifts of life insurance. The information and references in this section may be of particular interest to those who assist you in your estate and financial planning.

## The Basic Tax Rules

*Fair market value:* The fair market value of a life insurance policy given to charity is not necessarily the amount the donor may deduct as an income tax charitable contribution, but it is the starting point for determining that deduction.

For a paid-up policy, the fair market value for federal gift tax purposes is the cost of replacing the policy. See Reg. §25.2512-6(a), Example (3). For federal income tax purposes, however, the fair market value of a paid-up policy is its cash surrender value, which reflects the amount the charity could realize by cashing in the policy. See *Tuttle v. U.S.*, 436 F.2d 69 (2d Cir. 1970).

For a whole life policy with remaining premiums due, the fair market value is the interpolated terminal reserve value plus the unexpired portion of the last premium paid. This value is increased by any accrued dividends and decreased by any outstanding loan against the policy. See Reg. §25.2512-6(a).

For a term policy, the fair market value is simply the unexpired portion of the last premium paid. See Rev. Rul. 76-490, 1976-2 C.B. 300; Rev. Rul. 79-47, 1979-1 C.B. 312.

## The Donor's Income Tax Charitable Deduction

*Ordinary income rule:* The income tax deduction for a donated policy is limited to the lesser of the policy's fair market value or the donor's basis in the policy. The basis is typically the total net premiums paid (gross premiums minus any dividends returned to the donor).

Because the appreciation (or inside build-up) in a life insurance policy is considered unrealized ordinary income, not capital gain, it is not deductible. See IRC §170(e)(1)(A). The charitable deduction is reduced accordingly.

*Planning technique:* Because of this, in some situations the donor may find it advantageous to cash in the policy and then donate all or a portion of the cash received. Although cashing in the policy causes the donor to realize any inside build-up in the policy as ordinary income, it may be possible to offset this income completely with the charitable deduction for the cash donation. Whether the donor will obtain a complete offset depends on the percentage limitations applicable to the income tax charitable deduction discussed below.

The result to the donor (assuming a complete offset) will be a net charitable deduction equal to his or her basis in the policy—the same deduction as would be allowed if the policy itself were donated. Unlike contributing the policy, however, contributing cash will not bring into play the qualified appraisal rules discussed previously.

*Percentage limitations on the federal income tax charitable deduction:* The federal income tax charitable deduction is subject to various percentage limitations based on the type of property donated and the recipient organization. The overall ceiling on the

deduction is 60 percent of AGI. Cash contributions to public charities are deductible up to this 60 percent limit. See IRC §170(b)(1)(G).

Gifts of certain types of appreciated property held long-term (e.g., securities or real estate held more than one year) to public charities are generally deductible up to 30 percent of AGI, based on the property's fair market value. See IRC §170(b)(1)(C). If the charitable contribution for a gift of an appreciated life insurance policy is reduced to the donor's adjusted basis because of inside build-up (i.e., unrealized gain in the policy), the donor's income tax charitable deduction is subject to the 60 percent AGI limit, as if it were a cash gift. See IRC §170(b)(1)(A) and §170(e). Excess charitable contributions that exceed the applicable AGI limit may be carried forward for up to five years. See IRC §170(d)(1).

### **Qualified Appraisal Rules**

Generally, a *qualified appraisal* (as that term is defined in Reg. section 1.170A-13(c)) is needed to sustain a claim of an income tax charitable deduction with respect to a donation of non-cash property other than publicly traded securities if the claimed value of the property ( or the aggregate claimed value of all gifts of similar property made during the year) exceeds \$5,000.

Is a life insurance policy cash or a publicly traded security? It is clear that a life insurance policy is not a publicly traded security. It is also fairly clear that a life insurance policy is not cash because, although it can be reduced to cash by being surrendered, the policy itself is a bundle of rights different from the rights constituting ownership of cash.

Therefore, to protect the tax position of the individual who donates a life insurance policy having a claimed value of more than \$5,000, it is prudent to obtain a qualified appraisal for the policy. The income tax regulations provide that a qualified appraisal cannot be prepared by a party to the transaction in

which the donor acquired the item to be appraised. See Reg. section 1.170A-13(c)(6)(iv)(B). Neither the insurance agent who sold the policy to the donor nor the issuing company may prepare the appraisal.

The safest course of action in obtaining the appraisal is probably to have the appraisal prepared by someone competent by reason of training and experience to value an insurance policy and who had no connection with the issuance of the policy (e.g., a tax accountant). There is no prohibition, it is worth noting, against the appraiser using information provided by the issuing company to appraise the policy.

In addition to obtaining a qualified appraisal, the donor is required to file an appraisal summary- IRS Form 8283-with his or her federal income tax return on which the gift is first claimed or reported. See Reg. section 1.170A-13(c)(4). The appraisal summary must be acknowledged (signed) by the donee organization.

If the donee organization, within three years of the date of gift, sells or otherwise disposes of donated property as to which it has signed a Form 8283 it must report the sale to both the IRS and to the donor on IRS Form 8282. See IRC section 6050L.

In order for an appraisal to be a qualified appraisal, it must be obtained no earlier than 60 days before the date of gift and no later than the day before the due date of the income tax return on which the gift is first claimed or reported. Due date includes extensions of time to file the return. See Reg. section 1.170A-13(c)(3)(iv)(B).

### **Gift of a Policy Subject to a Loan**

In general, if an appreciated asset is given to a charitable organization, the donor does not realize the appreciation for federal income tax purposes. The reason is that generally, gain is

realized only if an appreciated asset is sold or exchanged, and a charitable contribution is merely a donative disposition.

If appreciated property subject to a mortgage or other indebtedness is given to charity, however, the transaction is treated as a bargain sale under Reg. section 1.1011-2, and the donor does realize a portion of the appreciation as a capital gain or as ordinary income, depending on the type of appreciation involved.

The IRS has taken the position that a donation of a life insurance policy subject to a policy loan is a bargain sale- just as is a donation of mortgaged real estate. In other words, the IRS views the policy loan the same way it views a mortgage. See Revenue Rul. 80-132, 1980-1 C.B. 255.

*Bargain sale formula:* The amount of gain realized when property subject to debt is given outright to a charitable organization can be determined using this formula:

$$\text{Gain Realized} = (\text{FMV} - \text{Basis}) \times (\text{Loan} / \text{FMV})$$

For example, if a life insurance policy with a fair market value of \$10,000, basis of \$4,000, and a \$2,000 loan is donated, the donor realizes a gain of:

$$(\$10,000 - \$4,000) \times (\$2,000 / \$10,000) = \$1,200$$

The charitable deduction equals the donor's equity in the policy (\$10,000 - \$2,000 = \$8,000), minus the allocated appreciation on that equity:

$$\$6,000 (\text{total appreciation}) \times (\$8,000 / \$10,000) = \$4,800$$

Resulting in a charitable deduction of:

$$\$8,000 - \$4,800 = \$3,200, \text{ subject to the 60\% AGI limit. See IRC } \S 170(e)(1)(A).$$

## Gift of Group Term Coverage

Generally, an employee must report as income the cost of employer-paid group term life insurance on his or her life for coverage in excess of \$50 000. See IRC section 79(a).

A special rule, however, excuses the cost of employer-paid group term coverage in excess of \$50 000 for coverage payable irrevocably to a qualified charitable organization for the entire portion of the taxable year during which such coverage is provided to the employee. See IRC section 79(b) 2)(B).

This basically means that an employee can tack on some additional employer-paid group term coverage for the benefit of his or her favorite charity at no tax cost to the employee.

## Insurance Interest Issue

Many states permit charitable organizations to purchase life insurance on an individual's life, provided certain requirements are met. State law should always be consulted when implementing such a strategy.

## Wealth Replacement

There are numerous charitable gift planning techniques involving life insurance. One example is the use of life insurance to replace assets that have been donated either on an outright basis or through other planning techniques.

The so-called *wealth replacement plan* comes in several varieties. The basic idea of the plan is to make a charitable gift (either outright or via a charitable remainder trust or other life income plan) and to use the tax or other financial benefits resulting from the gift to pay for life insurance.

The wealth replacement plan can be an excellent way for a charitably motivated person to make a gift while still providing

for loved ones. It should be kept in mind, however, that the purchasing of insurance with the tax and other financial benefits of the charitable gift is simply an investment choice on the donor's part, and that the donor may wish to consider other investment alternatives.

The purpose of this publication is to provide general gift, estate, and financial planning information. It is not intended as legal, accounting, or other professional advice. For assistance in planning charitable gifts with tax and other financial implications, the services of appropriate advisors should be obtained. Consult an attorney for advice if your plans require revision of a will or other legal documents. Tax deductions vary based on applicable federal rates, which can change. Some opportunities may not be available in all states.