IVINS, PHILLIPS & BARKER
CHARTERED

UNDERUTILIZED CORPORATE CHARITABLE GIVING TECHNIQUES

Presentation to the Cincinnati-Columbus TEI Chapter

Victor Chang and
Jeremy Bearer-Friend
Ivins, Phillips & Barker

February 9-10, 2015

Agenda

1. Company Foundations – The Basics and Beyond
2. Noncash Contributions to Company Foundations
3. Inventory Donations under Section 170(e)(3)
4. Donations of Employee Time
5. Employee Assistance and Disaster Relief
6. Employee Scholarship Programs
7. Matching Gift Programs
8. Cause-Related Marketing

★ ***Underutilized techniques and tax planning opportunities***

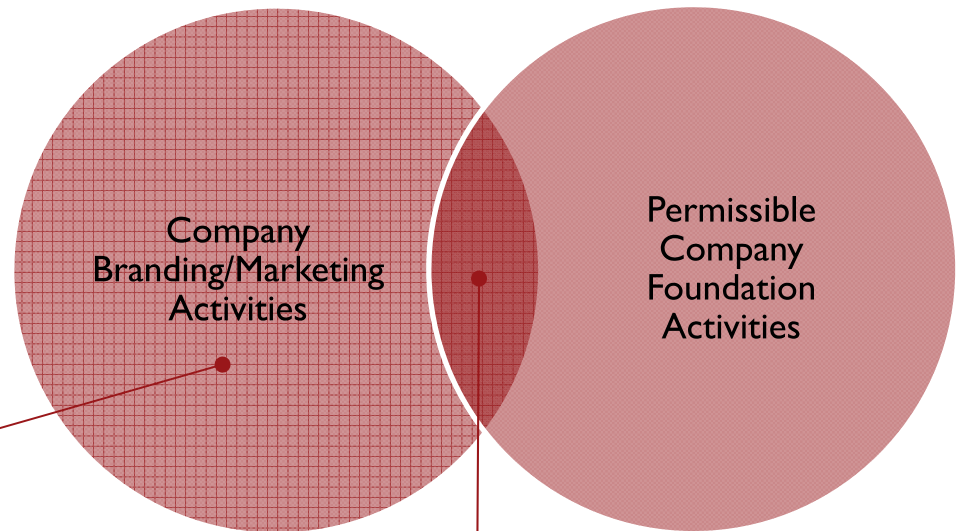
Company Foundations – The Basics and Beyond

- The charitable contribution deduction under Code section 170(b)(2)(A) allows a deduction of up to 10% of taxable income
- Primary Advantages of contributing to a company foundation rather than direct giving:
  - Consistent giving over time by toggling between foundation and direct giving
  - Tax efficient way to create public recognition
  - Centralized branding and oversight
  - More tax efficient vehicle for foreign charitable giving

- Primary Constraint – I.R.C. Self-Dealing Prohibition
  - Self-dealing restrictions under section 4941 apply an excise tax if a "disqualified person", in this case the company, receives benefits from the company foundation that are more than incidental or tenuous under Reg. 53.4941(d)–2(f)(2). Incidental or tenuous benefits exist when the public benefit far outweighs the benefit to the disqualified person
  - Biggest source of tax compliance pitfalls for company foundations

Company Foundations – The Basics and Beyond

★ ***Making Maximum Use of the Corporate Foundation to Enhance Company and Brand Recognition***



<u>Marketing/Advertising</u> <u>vs.</u> <u>Public Recognition/Goodwill</u>

Marketing/Advertising

- Material that promotes or markets company products & services
- Messages containing qualitative or comparative language, pricing
- Product endorsements and purchase inducements

Public Recognition/Goodwill

- Value neutral descriptions of company and its business, including product pictures
- Company brands, logos, and trade names
- Company locations, contacts and web address
- Slogans that are an established part of Company identity

Noncash Contributions to Company Foundations

- Donations of qualified appreciated stock to a nonoperating private foundation can be deducted at fair market value under Code section 170(e)(5)(B).
- Deductions for most gifts of appreciated property to a private foundation limited to the *lesser* of the adjusted basis of the property or FMV under section 170(e)(1)(B)(i).
- Under section 170(b)(1)(F)(ii), a private foundation may make "conduit distributions" to be treated as public charity for taxable year, if:
    1. The distributions are made not later than the 15th day of the third month after the close of taxable year in which contributions are received,
    2. The distributions total an amount equal in value to 100 percent of all contributions received in such year, and
    3. The foundation has also satisfied its 5% minimum distribution requirement for such year.

Noncash Contributions to Company Foundations

★ ***Using the conduit election to obtain full FMV deductions for noncash contributions to the company foundation***

Appreciated property contributed to foundation

- To avoid section 170(e) basis recapture rules and other limitations, select long-term capital gain property other than tangible personal property
- Appraisal generally must be obtained and Form 8283 must be filed with company's income tax return
- Timely written acknowledgement documentation is critical

Foundation makes conduit distribution election

- Actual "conduit distributions" not needed if the foundation has sufficient excess qualifying distribution carryovers to cover the value of the contributed property
- Foundation can elect under section 4942(h)(2) to treat a portion of its qualifying distribution carryovers as conduit distributions in satisfaction of section 170(b)(1)(f)(ii)

Subsequent tax-free sale by foundation

- Any gain recognized on sale escapes income tax, but 1-2% excise tax on foundation investment income may apply under section 4940
- To avoid potential application of anticipatory assignment of income doctrine, sale transaction cannot be planned at time of contribution

Noncash Contributions to Company Foundations

<u>Other commonly overlooked techniques</u>:

- ***Real estate donations***
- ***Company stock donations can be made at fair market value per Rev. Rul. 75-348***
- ***Donations of other property not in active use by company (mineral rights, water rights, etc.)***
- ***Donations to public charities to avoid private foundation self-dealing issues***

Direct Donations of Inventory

- Section 170(e)(3) provides for enhanced charitable deduction on corporate inventory contributions
  - Donee organization must be a 501(c)(3) public charity or operating foundation
  - Donated property must be used consistent with donee's charitable purposes "solely for the care of the ill, the needy, or infants"
  - Donated property must not be transferred by donee in exchange for money, property, or services
  - Written acknowledgement requirements must be met
  - All FDA requirements must be satisfied on date of transfer and 180 days preceding
- Amount of enhanced deduction is adjusted basis plus the lesser of:
  - One-half of the difference between adjusted basis and FMV, or
  - Twice the adjusted basis of the property

Direct Donations of Inventory

- ***Broad range of product donations and donee organizations possible within section 170(e)(3) framework***

Medicines to needy and uninsured patients

Food bank donations

Clothing and equipment to youth camps

Building materials for disaster relief

- ***Company-controlled operating foundation can be a qualifying donee***
- ***Additional enhanced deductions available under section 170(e) for donations of such as related-use tangible personal property and scientific property***

Donations of Employee Time

- Growing trend in corporate philanthropy emphasizing charitable donations of employee time.
- Contributions of services generally not deductible under section 170, but cost of corporate donations of employee time may be deductible pursuant to Treas. Reg. § 1.170A-1(g).
- Section 162 deduction may also be available to the extent not disallowed by section 162(b).

★ ***Section 170 vs. 162 deduction characterization worth consideration for major donations of employee time.***

★ ***Secondment agreements may be helpful in clarifying intended tax and employee benefit treatment***

Employee Scholarship Programs

- Section 4945 provides basic requirements of scholarships made by private foundations:
  - Scholarship must be awarded on an objective and nondiscriminatory basis
  - Grant must be awarded pursuant to a procedure approved in advance by IRS
  - The Grant must constitute a "qualified scholarship" that is excluded from the recipient's gross income under section 117(a)
- Rev. Proc. 76-47 gives parameters specific to scholarships limited to employees:
  - Cannot be used to induce employees to remain with company
  - Selection must be made by an independent committee using objective criteria with clear minimum standards
  - Area of study limitations cannot overly benefit employer
  - Percentage test for selectivity of the scholarship

Employee Scholarship Programs

- ***While Rev. Proc. 76-47 appears quite restrictive, PLRs reveal many areas of flexibility for aligning scholarship programs with company recruitment and employment objectives:***
  - ***Area of study restrictions***
  - ***Job function restrictions***
  - ***Minority/Diversity initiatives***
- ***Use of a company controlled public charity could add greater control and flexibility to an employee scholarship program***
- ***A company foundation's donation to the educational program the company planned to recruit from was deemed not to be self-dealing under Rev. Rul. 80-310***

Employee Assistance and Disaster Relief

- Traditional approach under Section 139
  - Must be presidentially declared disaster
  - Must be within the United States

- Under Rev. Rul. 2003-12, employees may exclude from gross income qualifying payments received from their employers. However, aid to employees from a company controlled private foundation must be:
  - To a large or indefinite class of beneficiaries
  - Awarded based on objective determination of need
  - Selected by an independent committee or with only incidental or tenuous benefit to the employer

★ ***Potential opportunity for creating a company-controlled public charity with employee contributions***
  - ***Could make donations outside of designated disasters***
  - ***Flexibility for foreign disasters***
  - ***Can facilitate leave donation programs***

Matching Gift Programs

- ***Rather than piecemeal donations, centralized giving can be coordinated through payroll deductions to reduce administrative burden on both grantees and company.***
  - Payment agent arrangements are permissible under Rev. Rul. 54-549
  - To ensure full compliance with Notice 2006-110, obtain written confirmation from donee organizations that the year-end statements are being provided at their request and direction
- ***Opportunity to use company foundation to fund matching contributions***
- ***Another opportunity to create a company controlled public charity***
- ***Executive and corporate director giving programs***

Cause-Related Marketing and Customer Engagement

- ***Key consideration: foundation giving vs. direct giving***
  - Self-dealing restrictions limit return benefits from foundation-funded initiatives
  - Section 170 vs. 162 – consider service agreements as alternative to donations
  - State charitable solicitation and commercial coventure registration requirements
- ***Certification programs***
- ***Customer-directed giving opportunities***

Questions?

Victor S. Chang
vchang@ipbtax.com
Direct: (202) 662-3462

www.ipbtax.com
Washington: (202) 393-7600
Los Angeles: (310) 551-6633

Jeremy Bearer-Friend
jbearer-friend@ipbtax.com
Direct: (202) 662-3447