



The Main Street Giving Coalition is working to level the playing field for all small businesses that donate to charity. Outdated rules prevent owners of S-Corporations from making certain gifts to charity, while other types of small businesses don't face those same restrictions. We can correct this problem by updating the rules governing S-Corporations, the small businesses that are the backbone of the U.S. economy and make vibrant Main Street America.

The Problem

Many S- Corporation owners and shareholders are nearing retirement and are looking for ways to donate their business assets to charities in their community.

One way that owners and shareholders of Limited Liability Companies (LLCs) and C-Corporations can give to charity is through a Charitable Remainder Trust (CRT). A CRT provides taxpayers a way to donate part/all of their businesses to charities generally upon their death. And in the interim, it allows for the taxpayer to receive an annuity in retirement. This split-interest CRT is smart giving because it generates income for the donor in retirement while earmarking a valuable asset for charity.

However, under current law, S-Corporations are the only entities unable to take advantage of CRTs. This inequitable treatment puts S-Corporations, their owners and the charities they support at an unfair disadvantage in the sale of that business.

Here's an example of the unfairness:

Suzy Shareholder is a part-owner of an LLC. She is preparing to retire and decides to transfer all her shares in the LLC worth \$500,000 to a charitable remainder trust for the benefit of the Red Cross, a charity in her hometown. Upon receiving those shares, the trust sells them for \$500,000 and invests the \$500,000 in a mutual fund. Suzy Shareholder can receive 5% of the return on that mutual fund for the rest of her life to supplement her retirement. Upon Suzy's death, the balance of the trust goes to the Red Cross. If Suzy were a part-owner of an S-Corporation, none of this would be available to her or the Red Cross.

A Solution

The Main Street Giving Coalition has a straightforward solution that would put S-Corporations on par with C-Corporations and LLCs.

First, Charitable Remainder Trusts need to be authorized shareholders of S-Corporation stock. S-Corporations could then be put into a CRT without losing their tax status.

Secondly, a corresponding change is needed to amend the UBIT rules to allow charities, upon the sale of the donated asset, to avoid UBIT on the proceeds of the sale.

The Bottom Line

By allowing a Charitable Remainder Trust to be an authorized shareholder of S-Corporation stock, all small business owners and shareholders would be treated equally, more resources would flow to charities to bolster our communities by correspondingly correcting the UBIT rules.

The recent tax reform bill puts at risk about \$95 billion a year in donations to charities. This proposal could help bridge that gap.

Additional Background

Prior to 1958, entrepreneurs had only two choices of entities to run their businesses: either as a C-Corporation or choose to be a partnership or sole proprietorship. Neither of these options were ideal for most small businesses. The Tax Reform Act of 1958 created the S-Corporation, offering a single layer of federal tax along with liability protection to business owners. And in 2014 there were estimated to be 4.6 million S-Corporation owners in the United States, according to the S-Corporation Association.

While the S-Corporation community has grown, the rules governing S-Corporations have lagged. Additionally, the emergence of Limited Liability Companies has given entrepreneurs new options for forming business, along with a substantial opportunity for charitable giving. It's time to modernize the treatment of all forms of small business entities when it comes to charitable giving. Empower all of Main Street to give.