

# Overview of Contributions of Closely-Held Business Interests

Many donors find that, although they have a substantial net worth, much of their wealth may be in a form that makes it difficult to use as an asset for charitable giving and charitable wealth/estate planning. Challenges may come from outright transfer restrictions, a lack of marketability, or limitations that surround one or more charitable giving tools subject to the private foundation regulations.

This overview is to provide guidance to donors and their professional advisors in completing gifts of closely-held stock. The purpose of the gift must be charitable and the St. Louis Community Foundation ("Foundation") must ensure that the donor's wishes will be fulfilled through the acceptance of the gift.

Donor advised funds and Supporting organizations through the Foundation can typically enable donors to gift closely held assets, obtain fair-market income and/or transfer tax deductions as well as anticipate the eventual sale of the contributed business asset back to a company, a company's ESOP, or family members.

The staff and legal counsel of the Foundation will work the donor's professional advisors to assess whether a gift of closely held business interests is the right fit for the donor and the Foundation.

## Evaluation of Potential Gifts: General Guidelines

### Type of Corporation

On a case-by-case basis, the Foundation may accept stock of:

**C-Corporations** and/or

**S-Corporations** In general, due to the structure of S-corporations, any debt-financed income is likely to subject the Foundation to Unrelated Business Income Tax (UBIT). Additionally, the income generated by the S corporation during the time the Foundation would hold it and any gain on the sale of the S-corporation stock may be subject to UBIT. There should be adequate assurances that the affected fund will have adequate cash to pay any UBIT that may be incurred by holding or through the sale of S-corporation stock, either from the investment itself or from further contributions from the donor. Prior to accepting the gift, the donor should agree in writing that there will be sufficient funds to pay such tax or other costs. Generally, the Foundation's Operating Fund will not advance funds for such expenses. The Foundation will work with the donor to determine the best structure (trust or corporate form) into which the S-corporation stock should be contributed in order to minimize UBIT (note: income tax rates may differ between trusts and corporations).

### Documentation

The Foundation will request and review any relevant documentation in consideration of the proposed gift which may include, but is not limited to: a qualified appraisal and/or appraisal summary, shareholder agreements, buy-sell agreements or other agreements, tax returns, proposed transfer instruments, and any proposed agreements or arrangements between the Foundation and the donor that pertain to the property. Such documentation may be reviewed by the Foundation's legal counsel.

### Sale or Liquidation

As a general rule, all gifts of securities are sold as soon as possible, usually on the same day as the gift. The fund designated to receive the gift is then credited with the proceeds from the sale, after commissions and expenses, if any. In the case of gifts of stock of closely-held corporations that are not readily marketable at the time of the gift, it should appear reasonably certain that the stock proposed to be transferred to the Foundation will be sold or liquidated at fair value and proceeds received into a component fund of the Foundation within a specific time frame, which by law is not to exceed five years, if the nature of the gift meets the "excess business holdings" definition established by the IRS.

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In the alternative, it should appear reasonably certain that the closely-held stock proposed to be transferred to the Foundation will generate annual income sufficient to provide a reasonable rate of return for the component fund into which it is received. <sup>i</sup>For purposes of this policy, the definition of “a reasonable rate of return” shall be determined by the Foundation, in its sole discretion. The President/CEO (in consultation with the Vice President and CFO) shall have the authority to determine whether the requirements of this paragraph have been met.

In negotiating the sale of closely-held stocks, a fair market value (price per share) will be established at the time of sale. No warranty is given by the Foundation that the valuation will be acceptable to the IRS. In some cases, the Foundation may obtain an independent appraisal of the value of the stock prior to agreeing to a proposed sale of the stock.

In addition, the donor will be advised that if the stock is sold, liquidated, or otherwise disposed of within three years of receipt, per the IRS, the Foundation is required to file IRS Form 8282 (“Donee Information Return”), unless the gift was valued below \$500 or was distributed for charitable purposes. See Treas. Reg. 1.6050L-1.

*Note: Excess Business Holdings.* Gifts of business interests to a donor advised fund may raise the issue of excess business holdings under the Pension Protection Act and Internal Revenue Code section 4943. Excess business holdings exist when the holdings of a donor advised fund together with the holdings of disqualified persons exceed 20% of the voting stock of the incorporated business, 20% of the profit interest of a partnership or joint venture, or 20% of a beneficial interest of a trust or similar entity. In such a case, the Foundation must divest of the excess business holdings within a period not exceeding five years. Ownership of unincorporated businesses that are not substantially related to the fund’s purposes is also prohibited.

## Administrative Fees

Funds holding closely-held stock will be charged the same administrative fees as all other funds at the Foundation and any direct expenses incurred on behalf of the Fund, such as legal, accounting and appraisal fees. The donor should provide adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor. All paid dividends will be used to offset all or a portion of the fee charged to the fund in the same year ending with the anniversary date of the gift. Dividends will be available for grantmaking.

## Tax Deductibility

The allowable tax deduction for gifts of closely-held stock will be subject to the IRS rules for closely-held stock gifts. The Foundation will provide the donor with any substantiation required for the donor to obtain a tax deduction.

# Responsibilities of the Donor

## Appraisal

The donor will be responsible for obtaining a qualified appraisal and/or appraisal summary in compliance with IRS regulations for the purposes of establishing the value of the gift for federal income tax purposes, including the preparation of Form 8283 (“Noncash Charitable Contributions”). See Treas. Reg. 1.170A-13(c). A copy of the appraisal to be sent to the Community Foundation.

## Transfer Instruments

It is the donor’s responsibility to prepare the appropriate instruments which are necessary to transfer the stock to the Foundation.

## Documentation of Restricting or Limiting Agreements

The donor must provide documentation of any shareholder, buy-sell, or other agreements that impose any restrictions or limitations upon the sale or transfer of the stock.

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## Acceptance Agreement

Prior to or upon acceptance of the gift, the donor and the Foundation must agree in writing to all the terms of the gift which will include the following:

1. *No Material Restrictions.* Prior to or upon transfer of the stock to the Foundation, the donor and the Foundation will sign an agreement (which may be approved by the Foundation's legal counsel) stating the terms of the gift, which must specify that there are no restrictions on the Foundation's right to use or convey the closely-held stock.
2. *Expenses Associated with the Gift.* Prior to acceptance of the closely-held stock, the Foundation and the donor must agree in writing on arrangements for paying expenses associated with the stock, such as commissions or potential UBIT.
3. *Administrative Fees.* The donor should provide adequate assurance that the affected fund will have adequate cash to pay administrative fees, either from the investment itself or from further contributions from the donor.

## Expenses in Preparation of Gift

The donor is responsible for all expenses incurred during the preparation of the transfer of the stock.

## Discuss Gift with Professional Advisors

The donor is encouraged to and responsible for discussing all benefits, liabilities, and tax consequences derived from the gift of closely-held stock with their professional advisors before the gift is made.

## Discuss Gift with Family or Interested Parties

Donors will be encouraged to discuss contemplated gifts of closely held interests with their family or other interested parties before the gift is made.

## Contact Us

For more information or any questions you may have, [contact a Giving Specialist today.](#)

<sup>1</sup>Treasury Regulations require that THE FOUNDATION assure that its funds produce a reasonable rate of return. This can be particularly important for property held in designated funds, because while this requirement is applied based on the aggregate performance of most funds, it is made on a fund-by-fund basis for designated funds. See Treas. Reg. Section 1.170A-9(e)(11)(v)(F) and 1.170A-9(e)(13)(x). See Hoyt, *Legal Compendium for Community Foundations* 90.