## Case Study: Donating Privately held C-Corp Stock

# Share the success you've enjoyed

*Karen, a founder of the Powell Company ("Powell"), a privately held C-corporation, owns $10M worth of shares in Powell. She has a zero basis in her shares. Karen informs her advisor that Powell is in discussions with potential buyers for the company and intends to accept an offer shortly. Hearing this news and knowing that Karen is philanthropic, her advisor encourages Karen to consider donating some of her Powell shares to charity before the sale, in order to further her charitable intentions for now and the future. Karen is intrigued and wants to learn about the potential tax benefits of making such a contribution, and how to choose between making one or more direct gifts to charity, establishing and managing a private foundation, and using a donor advised fund. She recognizes that her co-founders, other senior level executives and investors, may also be interested in making charitable contributions.*

FIDELITY Charitable®

*Make more of a difference*

## Maximize your charitable giving

When you make an irrevocable contribution of long-term, privately held C-corp stock to Fidelity Charitable®, you will generally be entitled to a fair market value deduction for the charitable contribution, after which the proceeds become available to recommend grants to qualified public charities from your Giving Account®. Because Fidelity Charitable® is a 501(c)(3) public charity, capital gains taxes don't apply on its sale of C-corporation stock you donate. That means your tax deduction AND your gift to charity may be larger. Consider this example:

Karen owns C-corp shares with zero cost basis valued at: **$10,000,000**[2]
Federal long-term capital gains rate: **23.8%**[3]

**Karen wants to use a portion of her shares for charitable giving valued at:**

**$2,000,000**[4]

| | Karen sells her shares and donates the proceeds | Before the company is sold, Karen donates a portion of her shares directly to Fidelity Charitable and Fidelity Charitable sells the shares: |
|---|---|---|
| Long-term capital gains tax paid | **$476,000** | **$0** |
| | | *Valuation discount:* **8%** (due to minority interest and lack of control)[5] |
| Charitable Contribution | **$2,000,000** | **$2,000,000** |
| Charitable tax deduction | **$1,524,000** | **$1,840,000**[6] |
| Amount available for granting | **$1,524,000** | **$2,000,000**[7] |

**Additional amount dedicated to charity:**

**$476,000**

## Considerations

### 1. Is Karen's donation an anticipatory assignment of income?

Karen and her advisors must analyze whether at the time of the donation of Powell shares, the sale of Powell has proceeded to the point at which shareholders are considered to be holding the right to receive proceeds from the sale. At that point, the gain has generally attached and shareholders cannot avoid capital gains tax by donating the shares. Generally, if a contribution is made after all the material terms of the sale are agreed upon and there is no material risk that the sale will not close, the IRS may conclude on audit that the contribution is an "anticipatory assignment of income." In this case, the IRS could require payment of any capital gains tax that otherwise would have been due upon the sale of those shares (plus possible penalties and interest).

Whether or not a contribution will be considered an "anticipatory assignment of income" is dependent on the facts and circumstances.

### 2. What transfer restrictions apply to Karen and to the charity?

Powell's governing documents (i.e., shareholders' agreement, etc.) must be reviewed by the recipient charity to understand whether Karen and her transferees, including the recipient charity, are subject to transfer restrictions and, if so, what amendments/approvals/waivers are required to complete the charitable transfer.

Companies commonly include rights of first refusal and corporate redemptions (buy-backs), or other provisions.

### 3. How does Karen substantiate her charitable tax deduction?

Karen must obtain a qualified appraisal to substantiate the income tax charitable deduction she is claiming for non-publicly traded stock valued at more than $5,000. The donor reports this value on IRS Form 8283, which is attached to the donor's IRS Form 1040.

The charity must report to the IRS the proceeds received on IRS Form 8282 if the charity sells the asset within three years from the date of the donation.

Appraisals typically reflect lack of marketability and/or minority interest discounts. Discounts are highly dependent on the facts and circumstances existing at the time of the contribution.

Appraisals can be obtained no earlier than 60 days before the date of the donation and no later than the date the donor's tax return for the year of the gift is due with extensions. Appraisers charge a fee for this service.

### 4. What risk does the charity consider?

As a shareholder in Powell for a period of time, the charity must consider what risk it undertakes as part of that ownership status, including financial risk and other liability. If the charity will participate in the sale of the company, it may be asked to make representations and warranties (and face potential liability) as a selling shareholder. The charity will generally seek to eliminate or minimize any exposure as a selling shareholder, and may seek indemnification from the donor in certain circumstances (e.g., when there is unlimited financial liability post-closing).

## Potential benefits of giving an interest in a company directly to Fidelity Charitable:

- Provide more money to charities
- Minimize capital gains tax exposure
- Take a tax deduction



*This hypothetical case study is provided for illustrative purposes only. It does not represent an actual donor, but is meant to provide an example of how a donor-advised fund can help individuals give significantly more for the causes they care about.*

*[1] The donor will determine the fair market value of the privately held stock by obtaining a qualified independent appraisal, for assets held for more than one year.*
*[2] Total cost basis is the original value of an asset, in this case the C-corp stock.*
*[3] This assumes all realized gains are subject to the maximum federal long-term capital gains tax rate of 20% and the Medicare surtax of 3.8%. This does not take into account state or local taxes, if any.*
*[4] Amount of the proposed donation is the fair market value of the appreciated securities held more than one year. This example assumes that Karen obtained a qualified independent appraisal to determine the fair market value of the securities.*
*[5] Total cost basis is the original value of an asset, in this case the C-corp stock.*
*[6] This assumes all realized gains are subject to the maximum federal long-term capital gains tax rate of 20% and the Medicare surtax of 3.8%. This does not take into account state or local taxes, if any.*
*[7] Amount of the proposed donation is the fair market value of the appreciated securities held more than one year. This example assumes that Karen obtained a qualified independent appraisal to determine the fair market value of the securities.*