

**Charitable planning
strategies for advisors and
nonprofits**

The Top 10 Rules

**Helping your clients and your
business with charitable planning**

Professor Russell James III, J.D., Ph.D., CFP®

*Director of Graduate Studies in Charitable Financial Planning
& CH Foundation Chair in Personal Financial Planning
Texas Tech University*





Before getting started, make sure to establish charitable intent. Are they already donating? Do the plan to do so?

You can leave it to
____% family
____% government
____% charity (causes that have been important in your life)

**Of course, with every rule,
there's always an
exception.**

Don't leave estate gifts to
family that are illegal to sell.
They'll still owe estate taxes
on the appraised value.

“Canyon” by Robert Rauschenberg
appraised by the IRS at \$65M
(\$29.2M in Estate Taxes). It's a
felony to sell the art because it
includes a stuffed eagle. Other
examples: Ivory, Indian Artifacts



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1. Never give cash

2. Use the charitable swap
3. Learn “bunching” and other new tricks
4. Give retirement RMD first and more at death
5. Take deductions today for transfers tomorrow
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7. Buy life insurance with tax deductions
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9. Grow tax free
10. Maintain wealth over multiple generations



Appreciated asset gifts are objectively cheaper



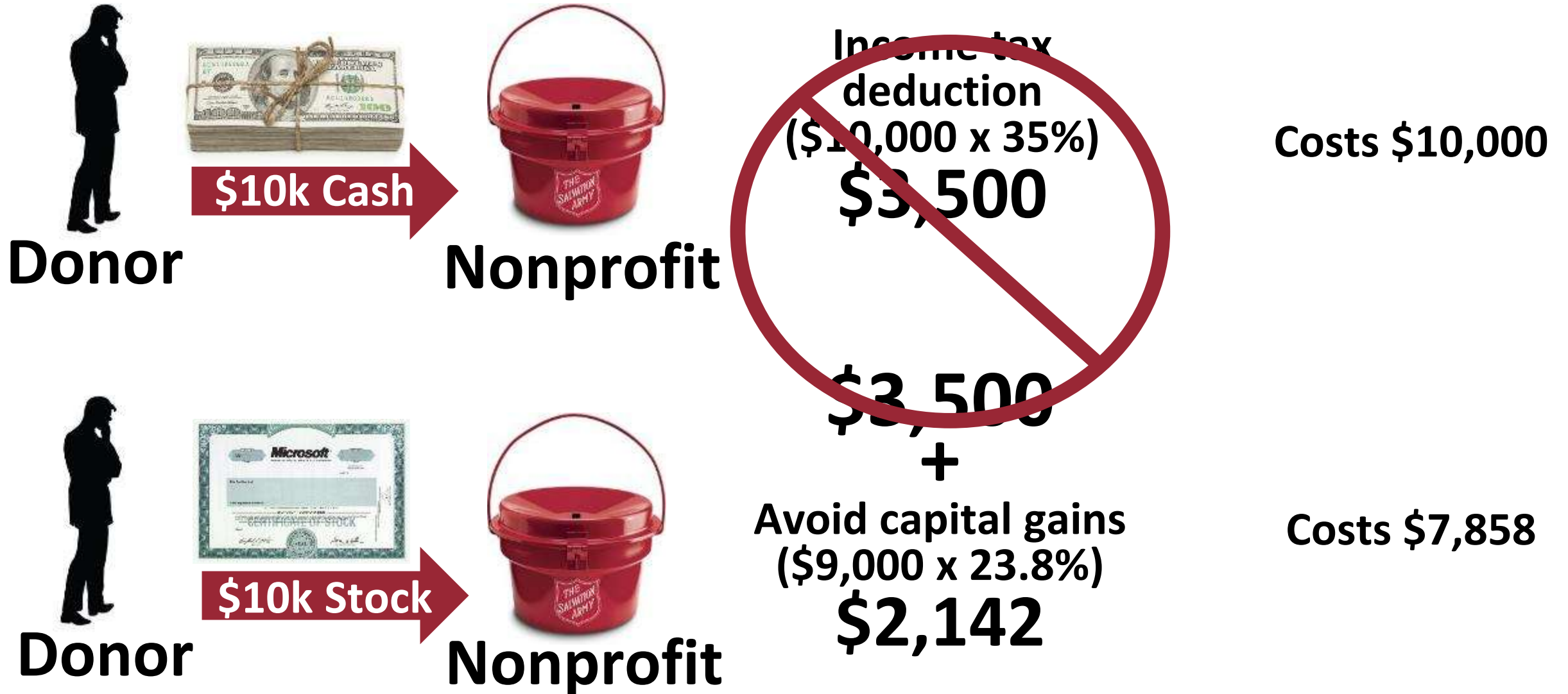
**Tax
deduction
only**

**Tax deduction
+
Avoid capital
gains tax**

Asset gifts are cheaper for itemizers



Asset gifts are cheaper for non-itemizers



Asset gifts are powerful because they prevent income recognition

- Selling creates income. Giving avoids this and keeps reported income low.
- Protects new OBBBA tax benefits
 - Senior bonus deduction phaseout \$75K+
 - \$40K SALT Deduction phaseout \$500K+
- And old ones too!
 - High income (e.g., AMT exemption \$500K+)
 - Low income (e.g., Soc. Sec. tax reduction \$25K+)
 - Special circumstances (e.g., medical deductions only > 7.5% AGI).



Income

Exception to the rule:
\$1,000 per person
non-itemizer charitable
deduction must be
cash to a public charity
(non-DAF).

Asset gifts became even cheaper for those in most states when exceeding SALT caps

		2017	2018
 Donor Net cost \$52,000 in '18 vs. \$53,756 in '17	 \$100k Cash →  Nonprofit	Income tax deduct. (\$100,000 x 39.6%) \$39,600 fed (\$100,000 x 11%) -(\$100,000 x 4.36%) \$6,644 state	Income tax deduct. (\$100,000 x 37%) \$37,000 fed (\$100,000 x 11%) - -(\$100,000 x 4.36%) \$11,000 state
		+	+
 Donor Net cost \$20,680 in '18 vs. \$26,356 in '17	 \$100k Stock →  Nonprofit	Avoid capital gains (\$90,000 x 23.8%) \$21,420 fed (\$90,000 x 11%) -(\$90,000 x 4.36%) \$5,980 state	Avoid capital gains (\$90,000 x 23.8%) \$21,420 fed (\$90,000 x 11%) -(\$90,000 x 4.36%) \$9,900 state

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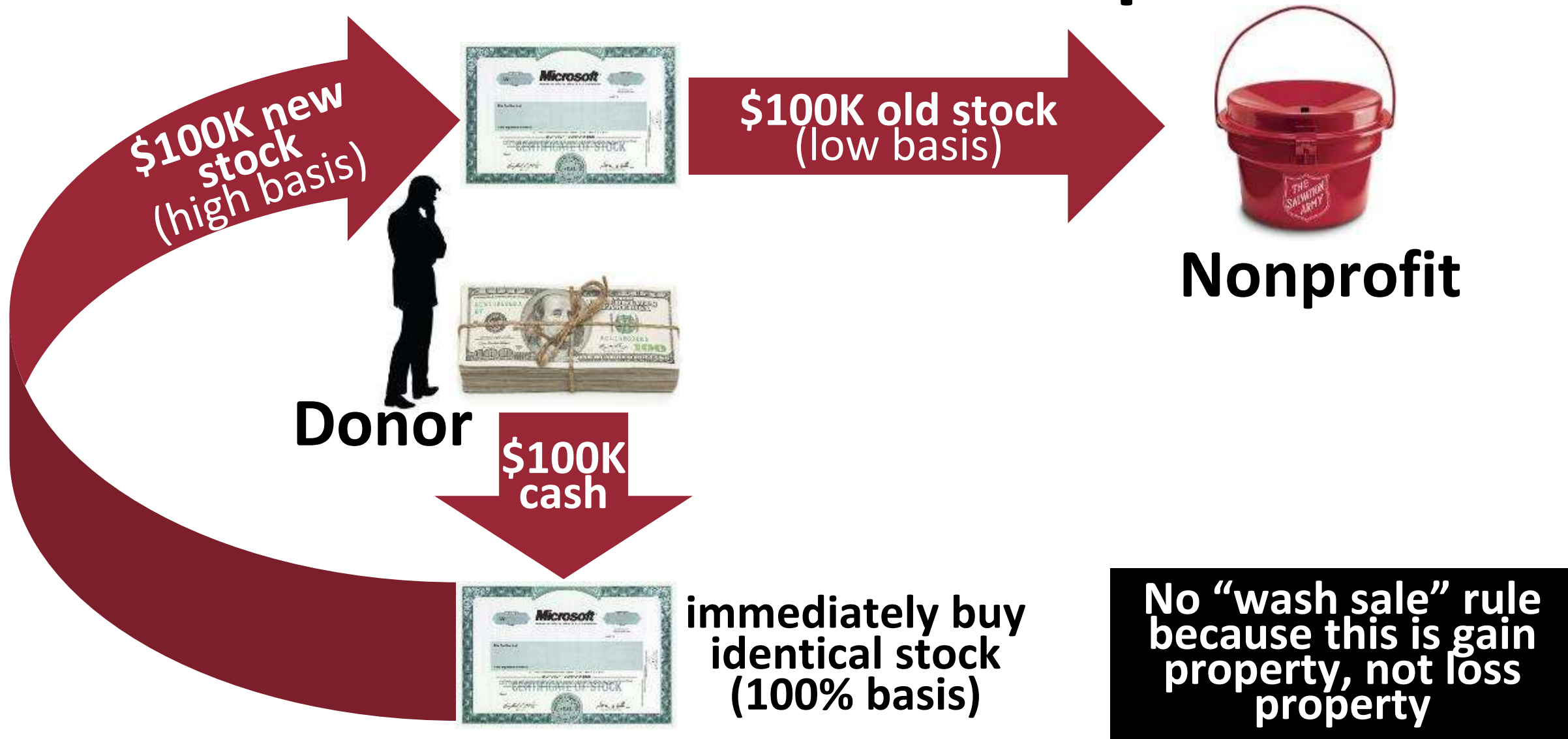
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10. Maintain wealth over multiple generations

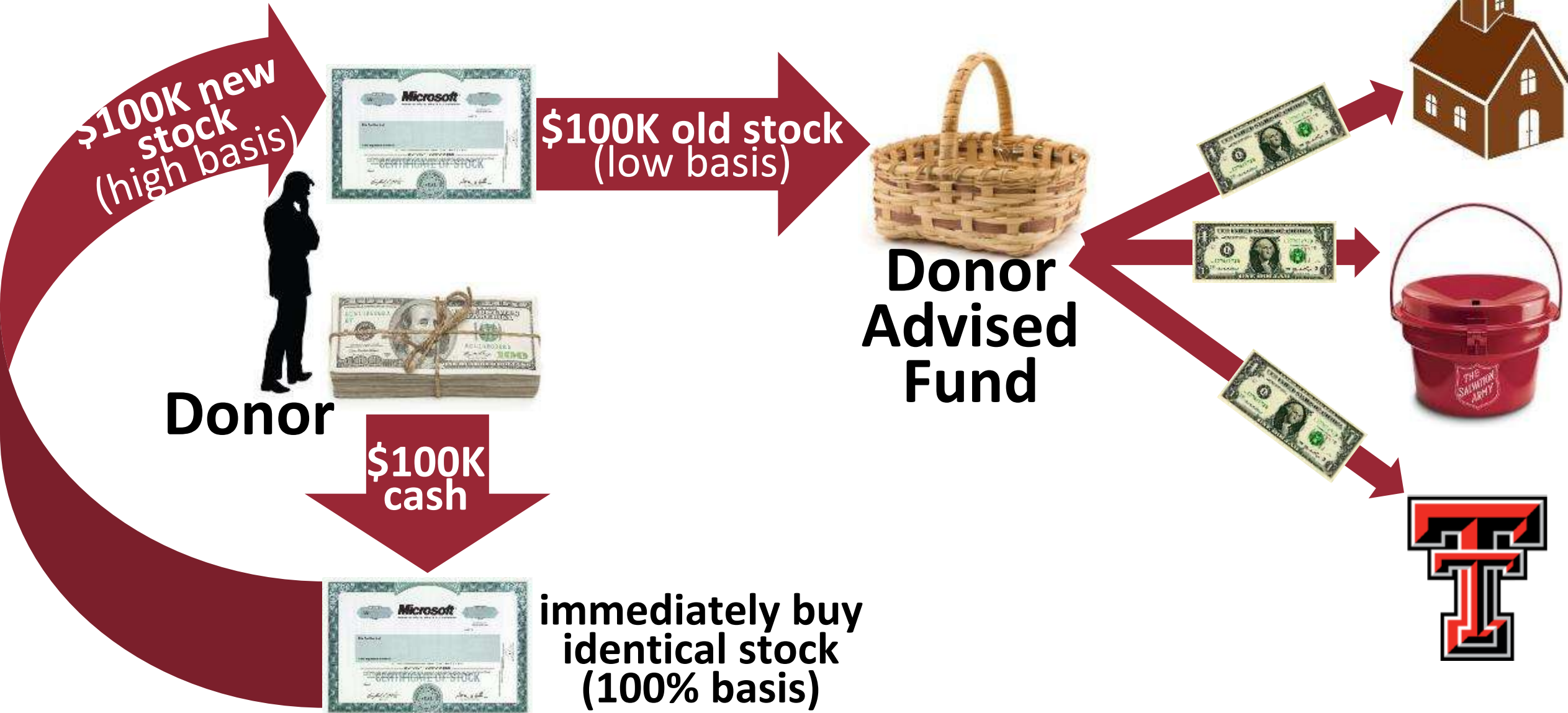


No need to change your portfolio!

The Charitable Swap



The Charitable Swap with a DAF



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For non-itemizers, consider bunching donations into BIG giving years

\$16,100
Standard Deduction

\$10,000

Deduction too small



Year 1

\$10,000

Deduction too small



Year 2

\$10,000

Deduction too small



Year 3

\$10,000

Deduction too small



Year 4



Year 1

\$40,000
is more than
the standard
deduction



**Donor
Advised
Fund**

\$10,000



Year 1

\$10,000



Year 2

\$10,000



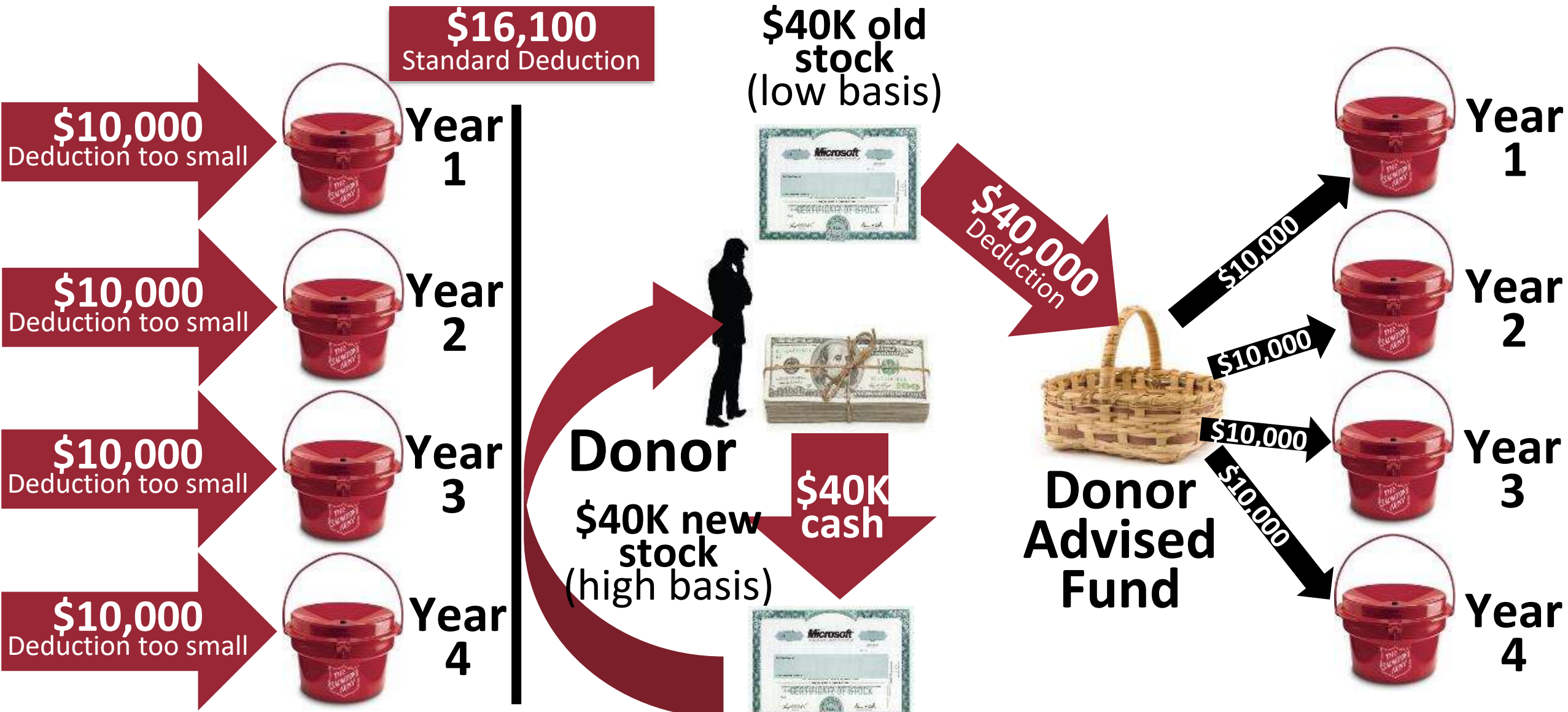
Year 3

\$10,000



Year 4

Smarter bunching with asset gifts



For itemizers, consider bunching donations into BIG giving years

Lose value of the standard deduction 4X
Lose 0.5% AGI floor 4X

\$20,000
Deduction



Year 1

\$20,000
Deduction



Year 2

\$20,000
Deduction



Year 3

\$20,000
Deduction



Year 4

Lose value of the standard deduction 1X
Lose 0.5% AGI floor 1X
or carries forward if hit
20% AGI capital gain to private foundation
30% AGI capital gain to public charity
60% AGI cash to public charity



Year 1

\$80,000



**Donor
Advised
Fund**

\$20,000



Year 1

\$20,000



Year 2

\$20,000



Year 3

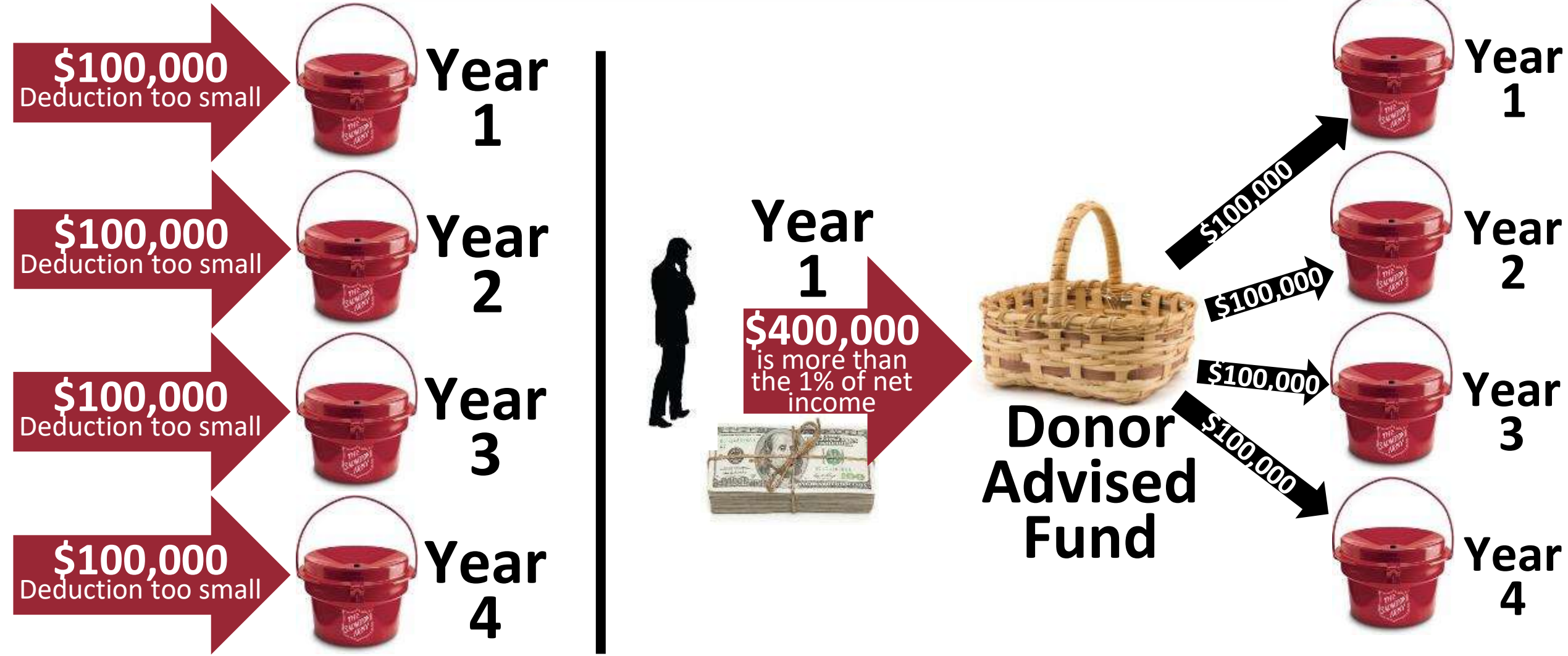
\$20,000



Year 4

For corporate donors, consider bunching donations into BIG giving years

If 1% of net income (charitable floor) = \$200,000



More Reasons to Bunch Post OBBBA

- Higher bar to itemize (standard deduction up \$750 to \$1,125 per person)
- More flexibility in off years (\$1,000 above the line deductions)
- Fewer times losing the 0.5% AGI charitable floor
- Touch an income-giving limitation (e.g., 30% AGI for capital gain gifts) and the floor is carried forward, not lost
- Bunching so much that it pushes taxable income from 37% down to 35% bracket now makes no difference



2018 wasn't all bad for charitable giving



- 1. Removed Pease limit cutting charitable deductions up to 80% (at 3% of income over \$261,500).**
- 2. Higher state tax benefits with SALT caps**
- 3. Income limits raised to 60%**
- 4. Above the line small gift deductions in 2020, 2021, dropped in 2022**

2025 tax law retained some charitable benefits



1. Removed Pease limit cutting charitable deduction to 80% of adjusted income over \$250,000.
New 35% cap is much better than Pease
2. Higher estate tax benefits with \$4M caps
40k down to 10k cap
3. Income limit raised to 60%
Made permanent
4. Above the line itemized gift deduction in 2020, 2021, 2022
Returns at \$1,000



1. The 20% deduction for business income phases out at higher *taxable income* levels
2. But charitable deductions reduce *taxable income*, and can thereby “bring back” the business income deduction from the dead
3. Double benefit: Charitable deduction + bringing back the phased out business income deduction

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Life stages of a retirement account



Early distribution (before 59 ½)



Regular distribution (59 ½ to 73)



Required minimum distribution (73+)

Giving after 73

After age 73 participants must take required minimum distributions (account balance / remaining life expectancy) or pay 25% penalty



Giving after 73

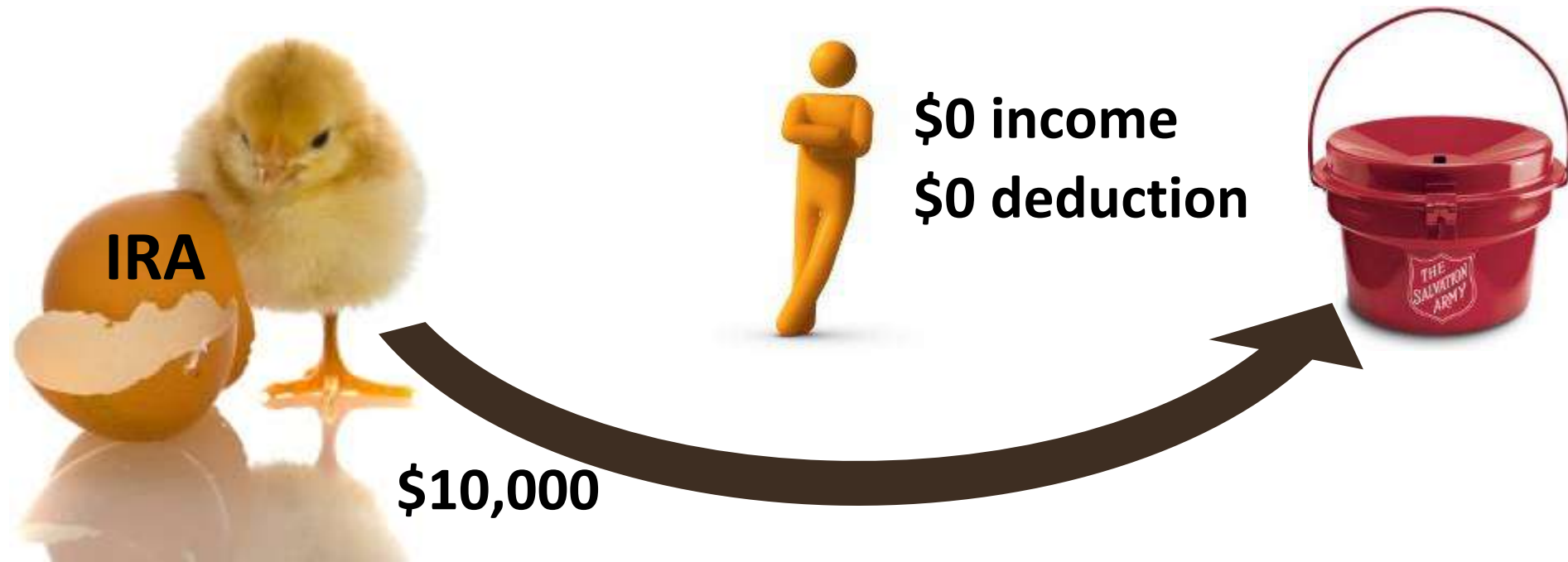
If the income is not needed, a charitable gift deduction ***might*** offset the income

(if itemizing *and* no income giving limitations exceeded *and* no negative effects from increased AGI *and* not in the wrong state)



Giving after 70½

A Qualified Charitable Distribution (QCD) eliminates both the income and deduction





Prevent income recognition: But wait, there's more!

Deduction: Reported income stays high, but taxes are lower

Avoidance: BOTH reported income AND taxes are lower. This can help with

- Medicare Part B & D payments

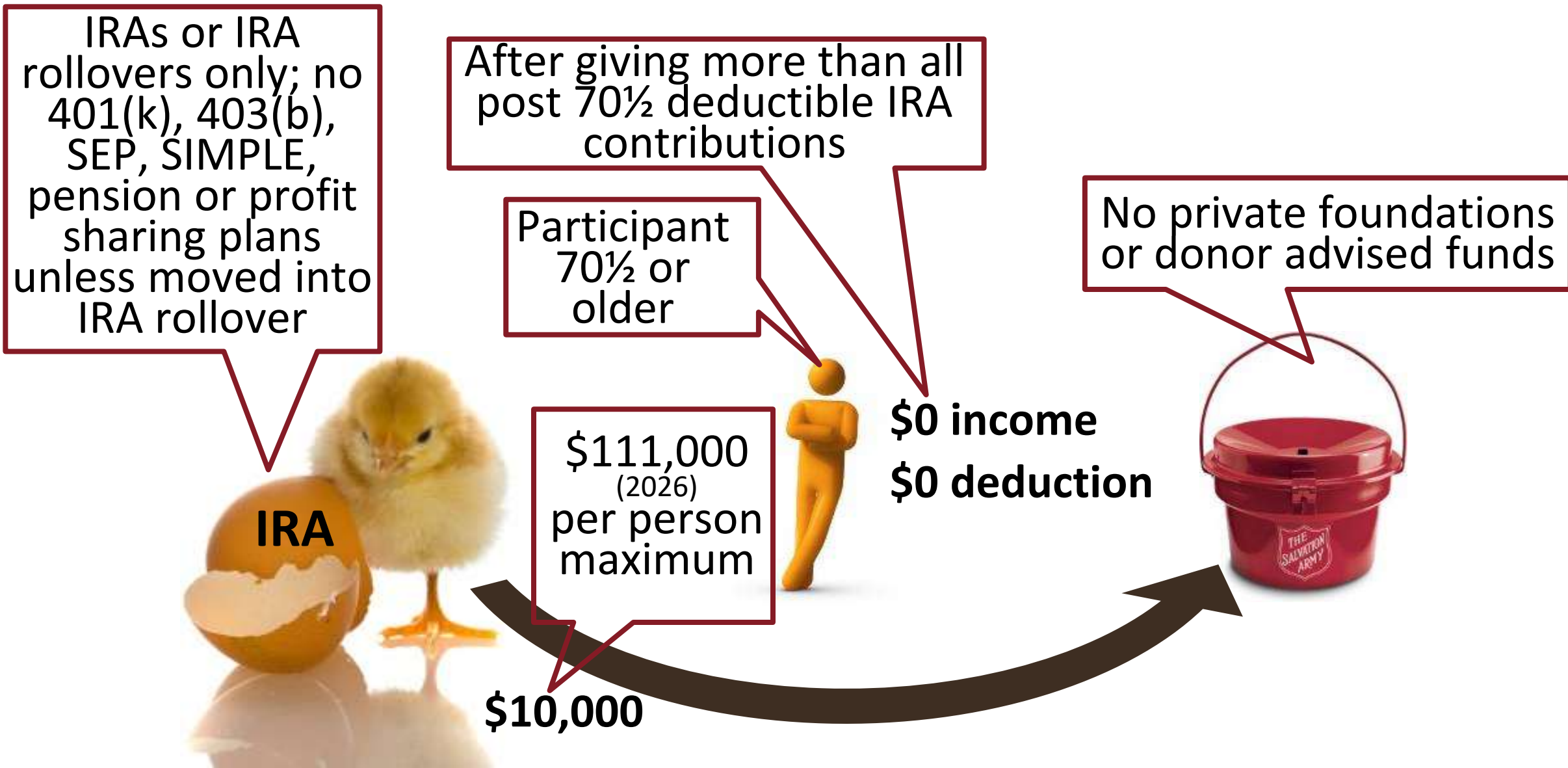
Eligibility for

- Deducting IRA contributions
- Making Roth IRA contributions
- Adoption credit

Eligibility for

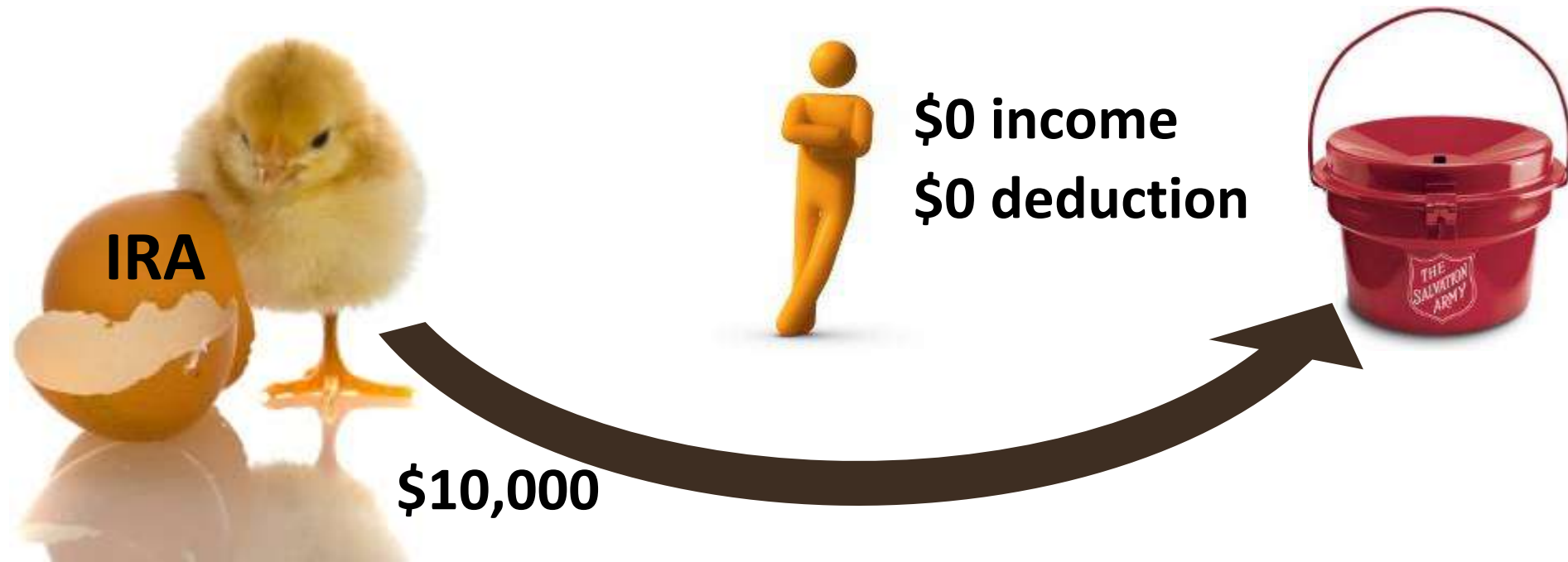
- Earned income tax credit
- Child tax credit
- Education tax benefits
(American Opportunity Credit, Lifetime Learning Credit, deductibility of student loan interest)

Qualified Charitable Distribution (QCD)



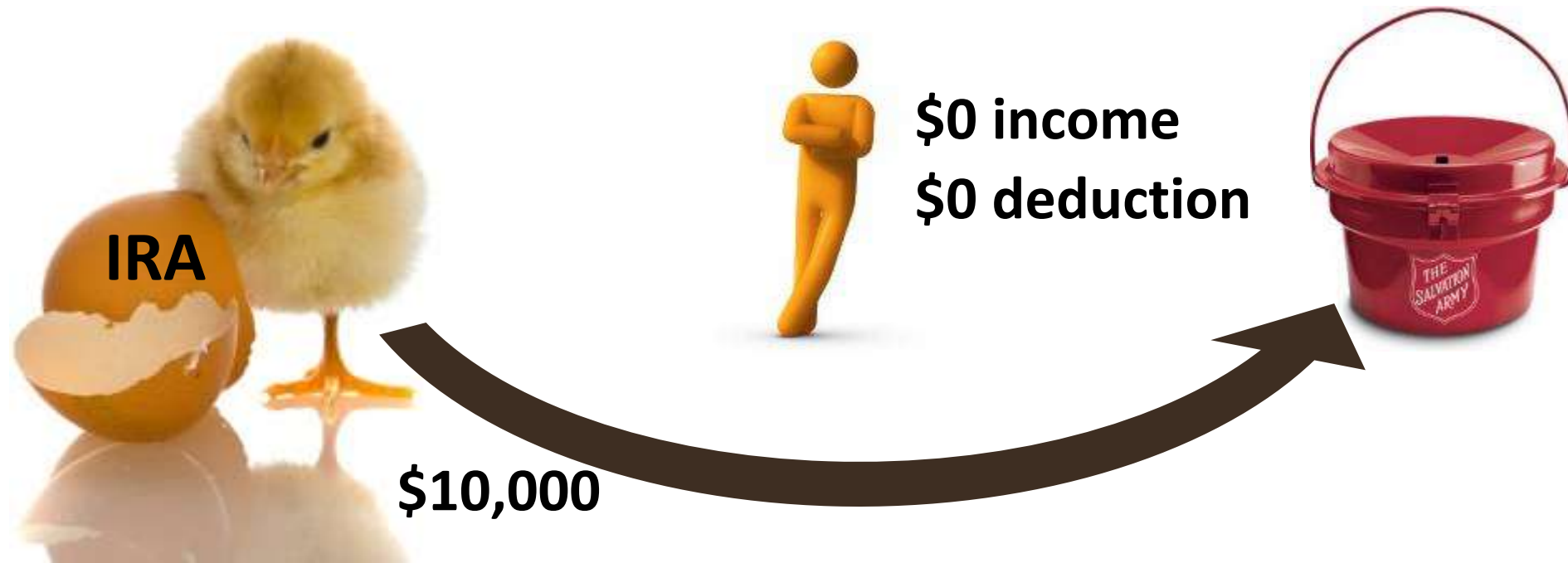
Giving beyond or without an RMD

- Income taxes must be paid on this money sometime unless it is transferred to charity.
- Tax avoidance (QCD) is more efficient than a tax deduction.
- It is much more efficient than an unused tax deduction (not itemizing).



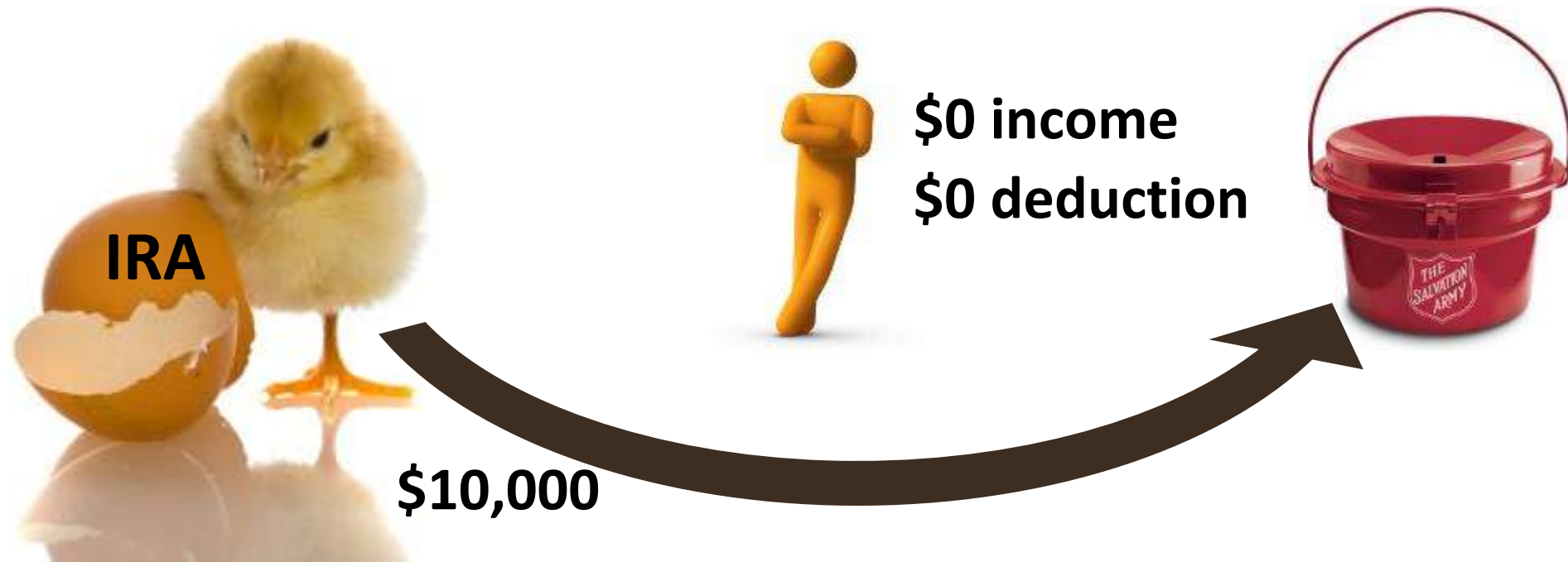
How much can a donor age 70½ + transfer via QCD in 2026?

1. If their RMD is \$25,000? Answer: \$111,000.
 2. If their RMD is \$0? Answer: \$111,000.
 3. If their RMD is \$200,000? Answer: \$111,000.
 4. If their RMD is \$2 Million? Answer: \$111,000.
- (Hint: The answer is always \$111,000.)



You must first convert other plans to an IRA rollover

- Warning: Any RMD in the year of conversion must be paid out! (The QCD doesn't fix this.)
- Solutions: Convert prior to first year of RMD. Starting talking when approaching age 70 ½, not 73!



Added in 2023: Transfer to a charitable gift annuity



Entire amount counts toward RMD

\$55,000 (2026) per person maximum lifetime

Payable only to participant and spouse [non-assignable!]

100% taxable income

5% min payout



2027 2028 2029 2030 2031 ...



Death

Beware of the IRA to CGA traps

- Don't use standard CGA document – must be nonassignable
- 5% minimum payout (even if paying both spouses or ACGA rates are lower)
- Still 10%+ charitable present value (otherwise it's not a CGA and you are selling a security)
- You can send to a separate CRT, but currently admin/drafting costs are likely prohibitive

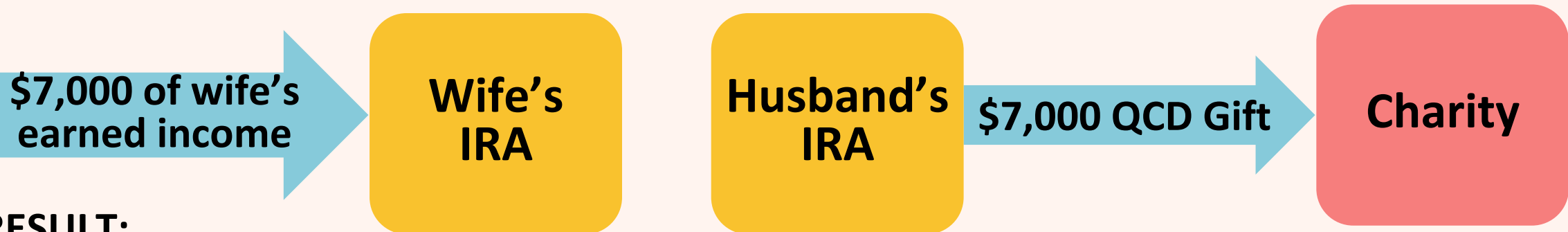


The SECURE Act's "above-the-line" charitable deduction

A donor couple has earned income, but doesn't want to change combined IRA balance



RESULT:
An unusable itemized deduction



RESULT:
An above-the-line \$7,000 deduction for Wife's IRA contribution regardless of her age.
No change in combined IRA balance: \$7,000 shift from Husband's IRA to Wife's IRA.
A \$7,000 reduction in Husband's Required Minimum Distribution with no income recognition.



**Retirement
plan assets
inherited by
non-charitable
beneficiaries
are reduced by
income tax**

**A client with a
\$1MM IRA and
a \$1MM house
wants to leave
one to her child
and one to
charity**

**Does it matter
which goes
where?**



IRA(child); House(charity)

\$1,000,000 House
\$1,000,000 to charity

\$1,000,000 IRA
-\$370,000 (37% federal income tax)
-\$133,000 (13.3% California state
income tax over SALT cap)
\$497,000 to child

**SECURE now requires
faster withdraw (10 years)**

IRA(charity); House(child)

\$1,000,000 IRA
\$1,000,000 to charity

\$1,000,000 House
-\$0 (no income tax)
\$1,000,000 to child



Retirement plan charitable beneficiaries



- A public charity
- A private family foundation
- A charitable remainder trust

Bad retirement plan death beneficiaries

- Not Charitable Lead Trusts (they aren't tax exempt)
- Be careful naming estate as beneficiary with instructions in estate documents (estate itself may have to pay income taxes)
- Any non-charitable trust recognizes income at 37% but deducts charitable transfers at 35%. (Instead, send directly to charity or to a DAF with instructions.)



Easy answers to a misunderstood issue

Problem? Charities are not “designated beneficiaries,” so might accelerate RMDs for other beneficiaries.

No problem! Solutions:

- Payout charity share before September 30 of year following participant death.¹
- Beneficiaries can separate accounts by end of year following participant death.²
- If spouse is beneficiary, simply roll that share into spouse's IRA
- Separate IRAs into a 100% charitable and 100% non-charitable account before death (+ RMDs can be taken from either to match desired plans)



1. Treas. Reg. sec. 1.401(a)(9)-4 Q&A 4(a) 2. Treas. Reg. sec. 1.401(a)(9)-8 Q&A 2(a)

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A retained life
estate deed can
give the
inheritance rights
to a charity

OK,
you can
have my
stuff now.

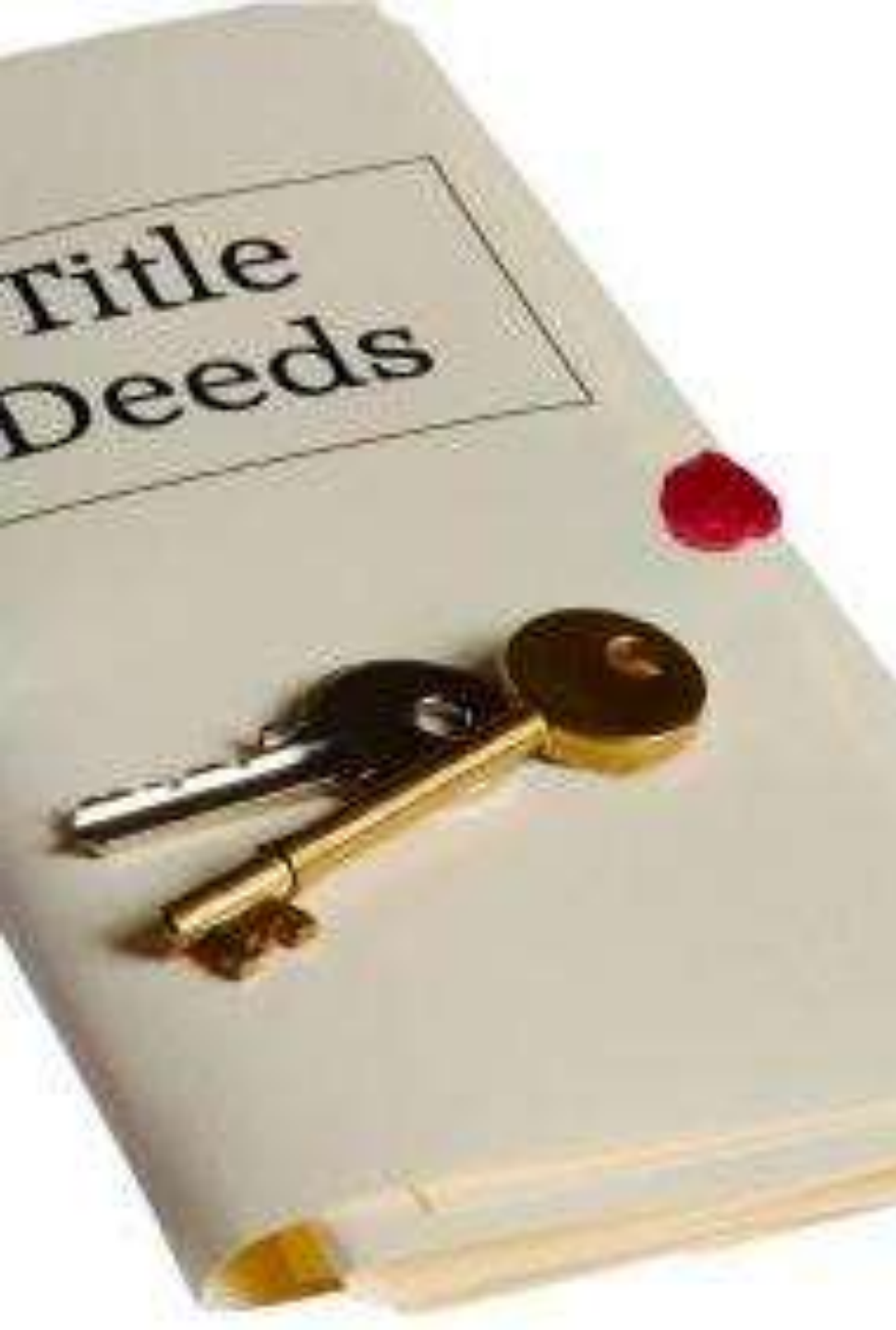
Charles A. Donor





Remainder Interest

Unlike a will,
a retained life
estate deed is
not revocable



Transferred by recording a deed

(not by trust or contract)

e.g., “To John A. Donor for life,
remainder to Texas Tech
Foundation, Lubbock, TX 70409”



Remainder Interest

Donating inheritance rights to personal residences or farmland with a retained life estate deed creates a charitable tax deduction

**Includes second homes,
vacation homes, even a
boat with bathroom,
cooking, and sleeping
facilities, if used by the
donor as a residence**



Charitable deduction for remainder interest deed with retained life estate in \$1,000,000 of farmland by age 55 donor



AFR Rate	
3%	= \$494,000
4%	= \$401,310
5%	= \$330,320

11.6% (May 89)

\$122,350



0.4% (November 20)

\$903,710

Some people use the tax savings to buy life insurance for heirs who weren't going to use the farm or house anyway

Leaving land to charity **by will**

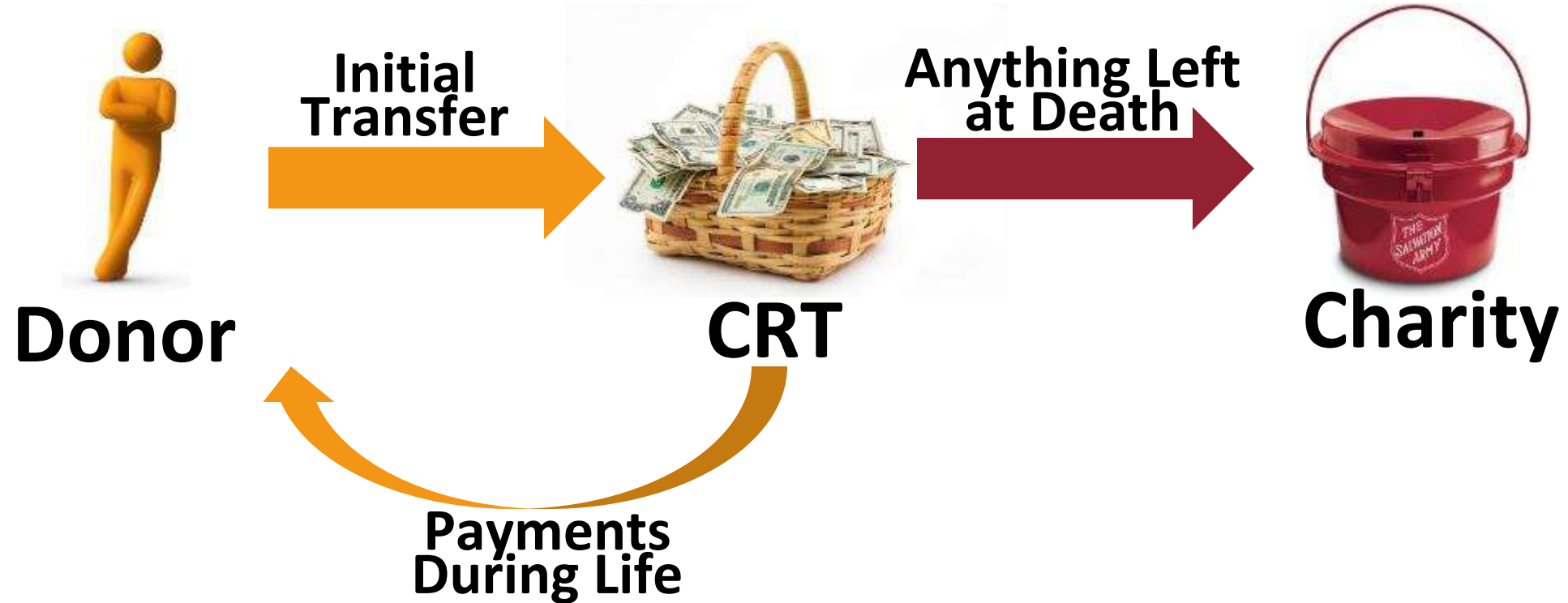
- Revocable
- \$0 income tax deduction



Leaving land to charity **by retained life estate deed**

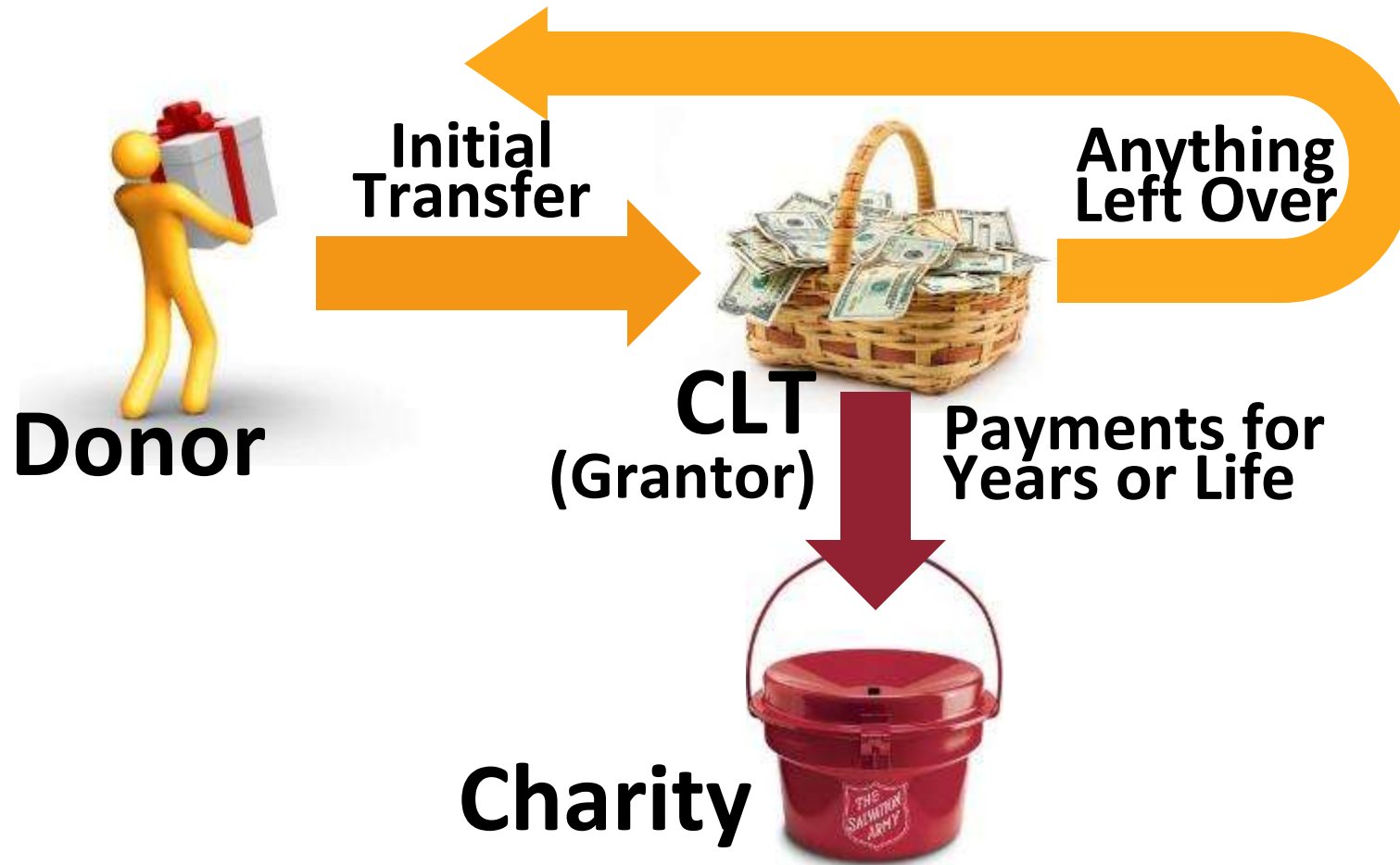
- Irrevocable
- Immediate income tax deduction
- Immediately increases donor's available cash by lowering taxes

Charitable Remainder Trusts generate an immediate tax deduction, even though donor can manage assets and receive income for life



Grantor CLT

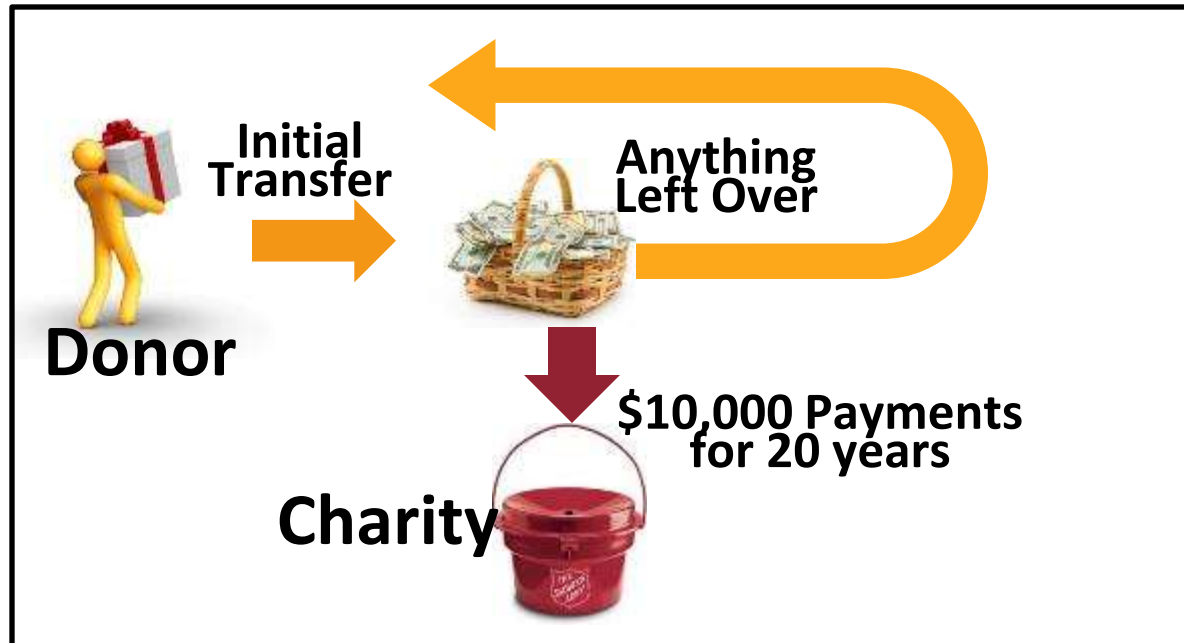
Donor immediately deducts present value of all future projected payments to charity



Funding \$10,000/year gifts through a 20-year grantor CLAT (returning remainder to donor) creates an immediate deduction

- **\$191,841 at 0.4%** §7520 rate
- **\$134,903 at 4%** §7520 rate
- **\$98,181 at 8%** §7520 rate

See iclat.net



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Roth conversions and charitable planning can work together to match

Income



Deductions





Taxable

\$1MM in standard
IRA (withdraws
are taxable)

**Roth
Conversion**



Tax Free

\$1MM in Roth
IRA (withdraws
are tax free and
no owner RMD)

**Conversion creates
\$1MM in immediate
income**

Where can I find offsetting deductions?



Where can I find offsetting deductions?



Put money into a

- Charitable remainder trust
- Charitable lead trust (grantor)
- Charitable gift annuity
- Donor advised fund
- Private foundation
- Retained life estate in a residence or farmland

Charitable deductions may be limited (with five-year carryover) to 20%, 30%, 50%, or 60% of income depending on gift and recipient



If I have unused deductions,
how can I pull future income
into current year in a tax
efficient way?



If I have unused deductions,
how can I pull future income
into current year in a tax
efficient way?

With a Roth conversion





Taxable

\$1MM in standard
IRA (withdraws
are taxable)

**Roth
Conversion**



Tax Free

\$1MM in Roth
IRA (withdraws
are tax free)

**Conversion creates
\$1MM in immediate
income**

Roth conversions and charitable planning can work together to match

Income



Deductions



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Charitable planning devices such as Charitable Gift Annuities, Retained Life Estates in Homes and Farms, and Charitable Remainder Trusts produce amazing tax advantages, reducing income taxes, capital gain taxes, and estate taxes



But they also reduce heirs' inheritance



Heir



Charity

Donor

Life insurance can diminish this concern



John, age 65, at 35% income tax rate, owns \$100,000 of farmland which he would like to use for the rest of his life then leave to charity, but he also wants to benefit his heirs



Giving the remainder interest to charity creates a deduction the value of which will purchase a paid-up policy of about \$50,000+.

John keeps lifetime use of farm

Charity gets 100% of farm at death

Heirs get \$50,000+ (estate tax free)



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A client holds a large, highly appreciated asset that generates little income (like developable land or non-dividend paying stock). How can she convert it to income generating property?

Option 1: Sell it. Pay the capital gains tax.
Earn income on the remaining amount.

\$1,000,000 stock

\$1,000,000 gain (if zero basis)

\$238,000 tax (23.8% fed + ?% state)

\$762,000 left to invest



Option 2: Transfer to a CRT. Earn income for life on the full amount.

\$1,000,000 stock

\$1,000,000 gain (if \$100,000 cost)

\$0 tax (CRT pays no tax)

\$1,000,000 left to invest



Can it pay to be charitable?

Priscilla wants to sell a \$1,000,000 non-income producing zero-basis asset then spend the interest income of 5% while leaving principal for heirs. Her federal tax rates are:

- capital gains (23.8%)
- income (37%)
- estate (40%)



Sale

\$1,000,000 asset
-\$238,000 capital gains tax

Client uses \$38,100/year
(\$762,000 X 5% return)

Heirs receive \$457,000
(\$762,000-\$304,800 est. tax)

CRUT

\$1,000,000 asset
\$0 capital gains tax

\$1,000,000 in 5% unitrust pays
\$50,000 annually + a charitable tax
deduction of \$300,000 worth
\$105,000 (35% deduction)

+ ILIT

Client pays \$105,000 initially and
\$10,000 annually for a \$400,000
ILIT-owned policy (including post-crummey gift taxes)



Client uses \$40,000/year



**Charity receives \$1,000,000
remainder**



Heirs receive \$400,000
(tax free from ILIT)

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Tax Free Growth Environments

- Growth inside a donor advised fund is tax free
- Growth inside a charitable remainder trust is tax free (only distributions are taxed)
- Growth inside a private foundation is tax limited (1.39% rate)
- AUM fees allowed in CRTs and PFs. (Proposed DAF limitations are likely irrelevant under Loper Bright.)



Tax free
growth
environments
increases
AUM

Year	DAF	Standard account
@ simple 10% returns	Tax free	Tax @ 37% Fed + 5% state
0	\$10,000	\$10,000
1	\$11,000	\$10,580
2	\$12,100	\$11,194
3	\$13,310	\$11,843
4	\$14,641	\$12,530
...	...	...
18	\$55,599	\$27,589
19	\$61,159	\$29,190
20	\$67,275	\$30,883

A CRT increases assets

- ↑ No upfront capital gains tax at sale
- ↑ Tax deferred growth (only distributions taxed)
- ↑ Immediate tax deduction
- ↑ Post-mortem management by family with DAF/PF beneficiary

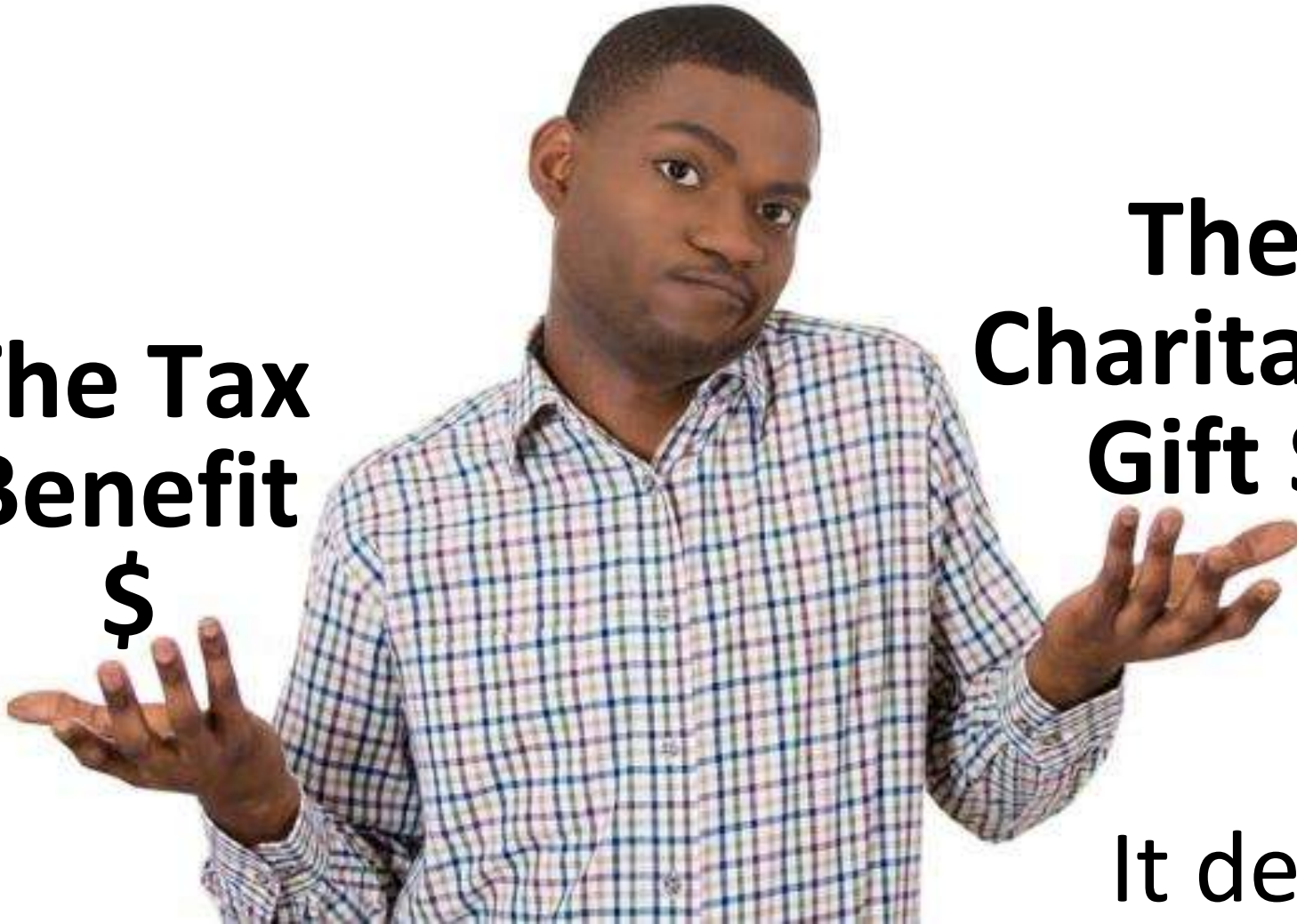


Will a maximum payout CRUT (with appreciated assets) give more after-tax dollars to donors & heirs than a direct investment with no charitable gift?

**The Tax
Benefit
\$**

**The
Charitable
Gift \$**

It depends...



Direct Investment v. Max-Payout

Monte Carlo Simulation of 3,000,000 retirement lifetimes

- **Age 60 male & 55 female**
- **Vary life span** (2012 IAM Table)
- **Vary returns** (historic large cap std. dev.)
- **Annual consumption**
2.8% of initial investment
then inflation adjusted
- **20% basis asset**

Yeoman, John C. (2014). The economics of using a charitable remainder trust to fund a retirement portfolio. *The Journal of Wealth Management*, 40-50.



Direct Investment (No Charitable Gift)

(run out of money)

Failure

9.9%

(Average PV of initial \$)

Consumed

52.88%

(Average PV of initial \$)

for Heirs

47.12%

Max Payout CRUT

(any payment below
projected consumption)

Failure

7.9%

(Average PV of initial \$)

Consumed

53.10%

(Average PV of initial \$)

for Heirs

61.48%

The IRA/401(K) stretch CRT

PROBLEM

- Non-spouse IRA/401(K) beneficiary must withdraw (and pay taxes) within 10 years
- This must start immediately, limiting tax deferral and tax-free growth

SOLUTION

- Naming a Charitable Remainder Trust (CRT) avoids this limit
- The IRA pays to the CRT with no taxes
- Family members pay taxes only on their CRT income for 20 years or life
- Tax-free growth continues inside the CRT



1. Never give cash
2. Use the charitable swap
3. Learn “bunching” and other new tricks
4. Give retirement RMD first and more at death
5. Take deductions today for transfers tomorrow
6. Match deductions with Roth conversions
7. Buy life insurance with tax deductions
8. Earn more by avoiding capital gains tax

9. Grow tax free

10. Maintain wealth over multiple generations



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Keeping wealth together for many generations is difficult

1. The government takes a chunk of the assets at each generation
2. The rest is divided into smaller pools at each generation for each beneficiary
3. The government then takes a chunk of all subsequent earnings
4. At some point you will have a greedy, spendthrift heir



A donor advised fund or private foundation holds money and distributes charitable grants



Multi-generational management

Inheritance

- Small pools after division by $1/n$ children and estate tax
- Taxation at each generational transfer
- Taxation on all earnings
- Risk of greedy spendthrift heirs



Private Foundation/DAF

- Big pool with no division
- No estate tax
- No capital gain tax
- No (or 1.39%) income tax
- Family management (soft power via distribution control)

P.F. Permitted Transactions

Foundation can hire an insider to perform necessary professional or managerial services (called “personal services”) if compensation is reasonable

- Investment advice
- Legal work
- Accounting/tax services
- Banking
- Administrative assistance



P.F. Permitted Transactions

Reimbursements of reasonable and necessary expenses such as meals and travel

- Travel to foundation board meetings for board members (and junior board members who perform some functions in that role)
- Travel to grantees or potential grantees sites to investigate current or potential awards



Private foundations
allow for unlimited
multi-generational,
nearly tax-free (1.39%)
control of wealth, with
ongoing ability to
provide insider travel
and employment for
professional/
management services,
and limiting charitable
activities to founder's
desires



Donor Advised Fund

- No minimum payout
- Minimal setup & administrative expense
- Expected control of grants
- Investment management allowed with many financial institutions
- Legislatively newer



Private foundation

- 5% minimum payout
- Significant setup & administrative expense
- Actual control of grants
- Investment management always allowed
- ~~Legislatively stable~~ (10% proposed tax removed at last minute)
- Family members can be employed by or reimbursed by the foundation

Non-Grantor Charitable Lead Trust

Donor gives money from which charity receives payments, with remaining amount going to family members





**Using non-grantor Charitable Lead
Trusts to cut gift and estate taxes**

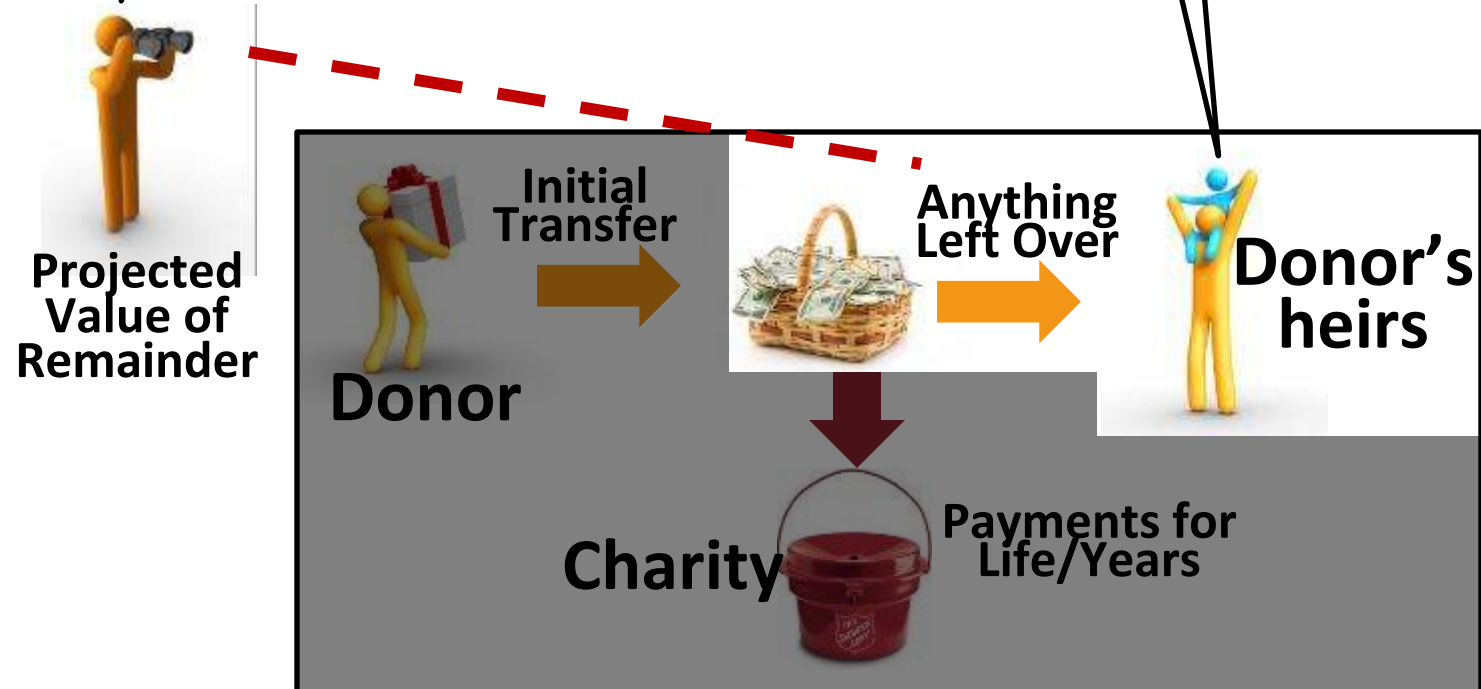
Gift taxes are paid on the present value of the **PROJECTED** remainder going to the heirs

Gift taxes are not paid on the **ACTUAL** remainder that eventually goes to the heirs

Projected Value of Remainder



If the **ACTUAL** amount
is higher than the
PROJECTED amount,
this part goes to heirs
tax free



The **PROJECTED** remainder assumes investment growth at the **INITIAL** \$7520 rate

If actual growth is greater than the \$7520 rate, the **ACTUAL** remainder will be greater than projected

Projected Value of Remainder



The **PROJECTED** remainder of \$10MM at 4% \$7520 with \$761,387/year charitable payments for 20 years is \$0, resulting in \$0 gift taxation

If actual growth is 10%, the **ACTUAL** remainder will be \$23,666,559

Projected Value of Remainder



If the charitable gift
(*or bequest*) was
already planned, the
zeroed-out CLAT
(*or zeroed-out
testamentary CLAT*)
provides a no cost
chance at tax-free
transfers to family



Advanced charitable strategies to preserve wealth

- Lifetime and testamentary transfers to private foundation
- CRT (spigot) paying for life (if desired for consumption) then to family foundation
- Zeroed out CLT that pays charitable interest to family foundation, excess growth to children
- Multi-generational: Testamentary CRT, income to kids, then to private foundation run by grandkids



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6. Match deductions with Roth conversions
7. Buy life insurance with tax deductions
8. Earn more by avoiding capital gains tax
9. Grow tax free

10. Maintain wealth over multiple generations



The Top 10 Rules

1. Never give cash
2. Use the charitable swap
3. Learn “bunching” and other new tricks
4. Give retirement RMD first and more at death
5. Take deductions today for tax tomorrow
6. Match deductions
7. Use tax deductions
8. Avoiding capital gains tax
9. Low tax free
10. Maintain wealth over multiple generations

For free links to all my slides, videos, and books:
EncourageGenerosity.com
(or connect on LinkedIn, Russell James, Texas Tech University)

