

WEBINAR

# What Advisors Need to Know About Charitable Planning Before The End of The Year



**P** rivate foundations can make grants to for-profit organizations (FPOs), but the rules are nuanced. To help wealth managers best guide their charitable clients, **Foundation Source's Chief Legal Officer Jeffrey D. Haskell** recently presented a webinar hosted by *Trusts & Estates* magazine to share some key considerations for year-end charitable planning.

Susan Lipp, editor-in-chief of *Trusts & Estates* magazine, moderated the discussion. Highlights of their presentation follow.



**JEFFREY D. HASKELL**  
Chief Legal Officer  
Foundation Source

## Can a private foundation make a grant to a for-profit organization?

Yes, but only when the grant serves a recognized charitable purpose and the for-profit acts as a vehicle—not a beneficiary. Also, private benefit must be unavoidable, minimized to the maximum degree, and be outweighed by the public benefit.

## What does the IRS consider a charitable purpose?

Charitable purpose is defined by the Internal Revenue Code, Treasury Regulations, IRS guidance, and case law. Examples include relieving poverty, advancing education, promoting health, and alleviating human suffering. Activities that seem charitable—such as operating a bakery to fund community programs—may fail IRS tests if the activity itself isn't inherently charitable.

## How does the IRS evaluate private benefit?

Under the private benefit rules, any benefit to private parties must be incidental. The IRS applies two tests:

- **Qualitative:** The private benefit must be unavoidable and necessary to achieve the charitable goal.
- **Quantitative:** The public benefit must outweigh the private benefit. Foundations should minimize private benefits wherever possible.

## What steps should a foundation take before granting to an FPO?

The foundation should negotiate fair market value to avoid excessive private benefit to the FPO. Additionally, the foundation should clearly document the IRS-recognized charitable purpose furthered by the grant, identify the intended charitable class and any unintended beneficiaries, and explain why:

- An FPO is the best choice under the circumstances (e.g., expertise, cost efficiency).
- Any private benefit is unavoidable, minimized, and outweighed by the public benefit.

## Is a grant always the best option?

Not necessarily. Foundations should consider whether a loan or equity investment could achieve the charitable goal while reducing private benefit. However, grants may be appropriate when the FPO cannot service debt or equity participation would deter other investors. Importantly, the foundation should ensure that it receives fair value and obtains appropriate concessions from the grantee. For instance, if the foundation makes a grant to a for-profit caterer to provide school lunches to disadvantaged children that might otherwise go hungry, the foundation could require that the lunches include fresh vegetables, fruits and other healthy options.

# Additional Considerations For Year-End Charitable Planning

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## Can foundations make grants to foreign organizations?

Yes. Foundations can use either:

- **Equivalency Determination:** A qualified practitioner certifies the foreign entity would qualify as a U.S. public charity. Note, however, that this assumes that the foreign entity would indeed qualify as a U.S. public charity; if it wouldn't, then an equivalency determination would not be a viable option.
- **Expenditure Responsibility:** A multi-step process involving due diligence, written agreements, tracking of funds, and reporting on the foundation's annual return.

## What compliance issues arise with corporate foundations?

Benefits to the company must be tenuous and incidental. Avoid self-dealing by steering clear of:

- Leasing office space from the company (unless rent-free).
- Splitting event ticket costs ("bifurcation").
- Satisfying pledges made by the company or its executives.

## What about real estate contributions to foundations?

Real estate can be held for charitable use or investment, but each has implications:

- Charitable-use property is excluded from the 5% payout base; related expenses count toward payout.
- Investment property is included in the payout base and may trigger liquidity concerns if the property comprises a large proportion of the portfolio and isn't income producing.
- Foundations must also address valuation, liability, state filings, and self-dealing risks.

## What are the biggest self-dealing pitfalls related to foundation ownership of real estate?

- Leasing, selling, or purchasing property from insiders—even at favorable terms.
- Allowing insiders personal use of foundation property.
- Paying expenses or insurance for periods when insiders owned the property. Violations can trigger significant penalties.

## When should a foundation seek a Private Letter Ruling (PLR)?

When the transaction is very large, the charitable purpose is novel or unclear, and the law is uncertain. Counsel should review facts and advise whether a PLR is prudent.

## How does this year's tax law changes affect charitable planning?

At the beginning of this year, the OBBBA introduced a 0.5% AGI floor for itemized charitable deductions (only amounts exceeding this threshold are deductible) and limits benefits for high-income taxpayers (e.g., capping tax savings at 35% rate for top bracket).

## Advisor Action Steps

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- Review clients' philanthropic goals and identify opportunities for strategic giving.
- Discuss compliance considerations for FPO grants, real estate contributions, and insider transactions.
- Consider private foundations or donor-advised funds for clients seeking flexibility and tax efficiency.

**This is a condensed, edited version of the conversation. Get full insights by watching the entire presentation [here](#). For more tax and legal insights, [check out our blog](#).**

## ABOUT FOUNDATION SOURCE

**Foundation Source is the leading provider of philanthropic software and services.**

At the forefront of PhilTech, Foundation Source is the partner of choice for flexible software and services that offer end-to-end support for private foundations, donor-advised funds and planned giving. We offer a range of purpose-built, cloud-based platforms that facilitate all stages of giving and a configurable suite of administrative, compliance, tax, and philanthropic advisory services for donors, nonprofits and charities, and professional advisors, including RIAs and financial institutions serving wealth management and private banking clients.

**With over 100 years of combined experience, Foundation Source empowers people and companies to create a better world through philanthropy.** We support more than 4,000 charitable organizations, administer more than \$40 billion in charitable assets, and facilitate more than 180,000 grants and planned gifts annually.

## HAVE A QUESTION?

Call 800.839.0054 or send us an email at [info@foundationsource.com](mailto:info@foundationsource.com).

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