

TALKING WITH CLIENTS ABOUT PHILANTHROPY

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The recent news about Facebook CEO Mark Zuckerberg's announcement of a multiple billion dollar charitable gift made the headlines and caught the attention of trusts and estates attorneys. Reading through the details, it seems that the Facebook shares have been retitled to a limited liability company owned by Zuckerberg. So just how was this deal structured, and was there any charitable gift at all? One might imagine the discussion between Mark and his planning attorney—perhaps something like this conversation with his fictional attorney, Ms. Smith:

Mark Z.: Ms. Smith, we've decided to make a major gift.

Ms. Smith: Along the lines of the educational support you've done over the last few years?

Mark Z.: No, not really. I mean, you know, something HUGE. But just not sure what we want to support. We have lots of ideas.

Ms. Smith: Ah. So, no specific charities in mind at this point?

Mark Z.: Well no ... that's one of the problems. We don't know what charities. Not even sure the right charities exist. We are thinking global and looking out to the future—way out. In honor of our child's birth. And the gift is so huge—most of my stock.

Ms. Smith: Oh, well that is HUGE. But if it's your stock, you have to think about your voting rights.

Mark Z.: That is the other big issue. And I am not ready to give up my voting control.

Ms. Smith: Hmm ...

Mark Z.: Maybe I am not really ready to decide. What about just parking it somewhere?

Ms. Smith: So maybe not even make the gift now? What about putting the stock in an LLC? You would still control it and when the time is right, do with it what you'd like, next year or 20 years from now. I like this because it will give us time to make a solid tax plan and you time to plan how to share this wealth with the world.

Mark Z.: That's really all we want right now. Thanks for talking it through with me.

Ms. Smith: Great! We will get started on drafts.

Who knows exactly how the discussion (or more likely several discussions) actually played out? Joking aside, Zuckerberg is extraordinarily generous and his new commitment could be transformative for the needs he decides to address.

The story does highlight the challenges of client/advisor conversations about planning, and in particular about charitable planning. Understanding clients' objectives is not always easy, and clients themselves are often uncertain about their wishes. Typically, a significant charitable gift is the result of several conversations between a client and her team of advisors considering the overall estate plan, estate and income tax implications, and charitable objectives. Flexibility can be critically important especially with major gifts and evolving philanthropic goals. The story also highlights how philanthropy is changing with donors of all types challenging their advisors and charities with different ways to give support.

This topic will be a significant part of the continuing legal education program of the New York State Bar Association Trusts and Estates Section Annual Meeting to be held on Wednesday, Jan. 27, 2016 at the Hilton Hotel in New York City. More details are available through the NYSBA website.

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