

# **cf** DADE COMMUNITY FOUNDATION *Professional Notes*

## ISSUES IN NEXT SERIES:

**JANUARY  
2000**

*Terminating a  
Private  
Foundation and  
Transferring  
the Assets to a  
Community  
Foundation.*

**MAY 2000**

*How a Private  
Foundation can  
use the Grant-  
making Expertise  
of Dade  
Community  
Foundation.*

## **A PRIVATE FOUNDATION OR A FUND IN A COMMUNITY FOUNDATION: WEIGHING THE OPTIONS**

During most of this century, the private foundation has been a popular vehicle for people of wealth to carry out their philanthropy. Foundations enable philanthropic individuals to accelerate tax deductions, involve family, focus grantmaking and obtain visibility for their giving if they wish.

Today, clients interested in forming a private foundation should be encouraged to examine the advantages of a fund in a community foundation such as Dade Community Foundation.

A community foundation is an aggregate of individual charitable funds. Its purpose is to build a charitable endowment to meet changing community need and to help donors with their charitable interests during their lifetimes and through their wills. Community foundations are expert in both philanthropic administration and effective grantmaking. Funds in community foundations operate much like individual foundations, bearing the family name and carrying out the donor's charitable interests over time.

### **A DONOR TO A COMMUNITY FOUNDATION HAS FOUR OPTIONS:**

•An **unrestricted fund** leaves discretion to the foundation's governing body to use the donor's gift to meet contemporary needs.

•A **field-of-interest fund** names a broad or narrow area or areas of interest, such as public education or the opera, and the community foundation identifies the nonprofit organizations best suited to carry out the purpose.

•A **designated fund** names specific nonprofits to receive grants, subject always to the board's variance power, which allows it to vary the purpose of a fund should circumstances so change as to make it "unnecessary, undesirable, impractical or impossible" to continue making grants for that purpose.

• The fourth option is a **donor-advised fund**. It is an unrestricted fund that allows donors to suggest the organizations to which they wish grants to be made, wherever they are located. At Dade Community Foundation, program and financial staff investigate all donor suggestions to ensure that the benefiting organization meets broad charitable guidelines and that its fiscal affairs are in order; the suggestions must then be approved by the governing board.

Community foundations offer donors most of the advantages of a private foundation at less cost and inconvenience, and provide superior tax deductibility for some gifts. In addition, a charitable fund benefits from the economies of scale and administrative sophistication of a major institution. It is these two important areas - tax and regulation and administration - that are discussed next.

---

### **TAX AND REGULATORY ISSUES**

Contributions to and funds in community foundations enjoy preferential tax treatment in a number of ways:

**Deductibility of Charitable Gifts.** Even though community foundations are actually aggregations of separate funds, they qualify as publicly supported charities under Internal Revenue Code sections 501(c)(3) and 170(b)(1)(A)(vi). That status entitles community foundation donors to tax deductions that are often superior to those accorded private foundation donors. These differences particularly affect clients who make large inter vivos gifts relative to income or who contribute appreciated property other than publicly traded stock.

For example, for gifts of cash, donors to community foundations may deduct up to 50 percent of adjusted gross income (AGI) in the year of gift,

**ABOUT DADE  
COMMUNITY  
FOUNDATION**

*For 32 years, Dade Community Foundation has been the community foundation for Miami-Dade County, an aggregate of funds created by individuals, families, and corporations to benefit the world around them -- especially the people of our community.*

*Grants made from these funds meet the changing needs of children, youth, and families; aid in community development; improve the environment; promote health; assist people with special needs; and support education, arts, and the humanities. The Foundation also has taken the initiative in responding to urgent problems -- such as Hurricane Andrew, the AIDS epidemic, and the needs of recent immigrants.*

with a five-year carryover for excess contributions. Private foundation donors may deduct up to 30 percent of AGI with the same carryover.

Community foundation donors who contribute gifts of appreciated property (other than tangible personal property) can deduct them at full market value up to 30 percent of AGI. Private foundation donors may deduct only gifts of publicly traded stock at fair market value up to 20 percent of AGI; all other forms of appreciated property, including closely held stock and real estate, are deductible at cost only.

**Other Rules Governing Private Foundation Activities.** To prevent fraud and abuse, the Internal Revenue Code and regulations embody numerous provisions that constrain private foundations. Generally, these restrictions do not apply to public charities, including community foundations. Private foundations that fail to properly abide by these requirements may be subject to penalty taxes.

**Excise Tax.** Private foundations pay a 2 percent excise tax on net investment income, ef-

fectively reducing funds available for grants. The tax may be reduced to 1 percent if certain payout conditions are met.

**Minimum Payout.** A private foundation must annually spend on grants and charitable expenses an amount equal to approximately 5 percent of assets, whether or not that much is earned. This can limit the private foundation's ability in some circumstances to hold low-yielding assets for later gain, or to accrue income for a major project.

**Excess Business Holdings.** In general, the private foundation and those who manage, control or make large gifts to it (and other related entities) may not together own more than 20 percent of the equity interest in a business. The foundation's "excess business holdings" generally must be disposed of within five years of receipt.

**Awards to Individuals.** In order to award scholarships, fellowships or other grants to individuals, a private foundation must first apply to the Commissioner of Internal Revenue for approval of its grandmaking procedures. Then it must obtain pre-grant and post-grant reports from each recipient and report the results to the IRS.

**COMMUNITY vs. PRIVATE FOUNDATIONS: EFFECTS ON DONOR INCOME TAX**

	<b>Community Foundation</b>	<b>Private Foundation</b>
Gifts of Cash <sup>(1)</sup>	50% limit	30% limit
Gifts of Appreciated Property	30% limit <sup>(2)</sup>	20% limit
Carryover	5 years	5 years
Value of Appreciated Property That can be Deducted	100% of fair market value	100% of fair market value only for gifts of publicly traded stock <sup>(3)</sup>

(1) This does not apply to tangible personal property. See Code Section 170(e)(1)(B) for special rules regarding such gifts.

(2) When making gifts of appreciated property, the donor may take advantage of the higher 50 percent limit if he or she is willing to deduct only cost.

(3) Gifts to a private foundation of non-publicly traded stock generally are deductible at cost basis.

**Grants to organizations that are unincorporated or lack 501(c)(3) status.** Private foundation must meet a series of statutory and regulatory requirements in order to make grants to charities that have not yet attained public charity status. This can inhibit response to civic emergencies, new organizations and neighborhood self-help groups.

**Grants to Foreign Charities.** Although private foundations can support the work of charities located overseas, they are subject to a complicated set of rules for exercising expenditure responsibility.

**Public Disclosure.** Both private foundations and community foundations file detailed annual reports with the IRS, and both must make public disclosures about their operations. However, donors to community foundations can remain anonymous, while the names of private foundation donors must be made public.

## ADMINISTRATIVE CONSIDERATIONS

**Cost Effectiveness.** Private foundations can be costly to establish and maintain, reducing the money available to charity. even for the most simple private foundation, initial filing and approval can take months and cost thousands of dollars. Routine operating items such as auditing, bookkeeping and government reporting can add significantly to the cost.

Funds within community foundations are typically far less costly to operate. A fund at Dade Community Foundation can be established in a matter of hours. The annual service fee and investment fees are low due to economies of scale. As a result, more money is available for grantmaking.

**Staff Support.** The costs of maintaining a private foundation with assets of less than \$10 million may make it impractical to hire professional staff. In contrast, each fund in a community foundation enjoys expert administrative support, investment management, and staff assistance with grant planning and proposal evaluation.

**Flexibility.** Almost any philanthropic purpose can be accomplished through a community foundation, which is structured to meet a broad and evolving set of charitable needs within a given geographic region, while allowing donors to suggest grants to qualified nonprofit organizations throughout the country and the world.

**Permanence.** Community foundations such as Dade Community Foundation are permanent endowments. They offer certain advantages over private foundations in managing a fund through the generations. Community foundations allow family involvement following a donor's death, but also carry on in his or her absence.

Dade Community Foundation can satisfy a client's most generous instincts, as well as offer substantial tax benefits. We provide the services needed by those who want their money to make a better world.

If you know of a colleague who would like to receive complimentary copies of Professional Notes, or if you wish to obtain past issues, please call Claudianna Williams at 305-371-2711.

### SERIES 1:

- Using Charitable Remainder Trusts
- Reforming A Defective Charitable Remainder Trust
- Charitable Lead Trusts

### FOR FURTHER REFERENCE SEE:

**Internal Revenue Code, Section 170:**

Income tax deductions for charitable contributions and the limits on such deductions.

**Internal Revenue Code, Section 501(c)(3):**

Charitable organizations defined.

**Internal Revenue Code, Section 509:**

Private foundations defined.

**Internal Revenue Code, Section 4940-4946:**

Rules governing private foundations.

**Treas. Reg. Section 1.507-2(a)(8):**

Material restrictions on assets.

**Treas. Reg. Section 1.170A-9(e)(10)-(11):**

Community trusts defined.

## ABOUT DADE COMMUNITY FOUNDATION

*The Foundation is governed by a 22-member Board of Governors composed of community leaders. Its staff is recognized for experience in grant making, financial administration, and donor services. In 1998 Dade Community Foundation made grants of over \$6 million and administered \$57 million of assets.*

*Professional Notes was designed by: Carlos R. Torres, Communication Associate.*

*This material was originally developed for the use of professionals by The New York Community Trust, one of the nation's largest community foundations. It was published as of March 1, 1999 with the understanding that neither the publisher nor the authors are engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. © The New York Community Trust 1998.*

**Dade Community Foundation because....** Your clients could not have a more experienced partner in philanthropy. Both individuals of wealth and modest means have turned to the Dade Community Foundation for more than 32 years to carry out their charitable wishes. They know about our expert staff of grantmakers, our distinguished board, and that we entrust our endowment funds only to the nation's most outstanding investors. Recommend they join us... and create a legacy in a way they may not have dreamed possible.



Nonprofit Org.  
U.S. Postage  
Paid  
Miami, FL

*For more information about the Foundation call Joe Pena, Director of Development at 305-371-2711.*

1999 BOARD OF GOVERNORS: Hugh A. Westbrook, *Chair* • Thomas McGuigan, *Vice Chair* • Sergio Gonzalez, *Secretary*  
Anthony Brunson, CPA, *Treasurer* • William H. Allen, Jr. • Esther Colliflower • Cynthia W. Curry • Albert E. Dotson, Jr., Esq.  
Guillermo J. Fernandez-Quincoces, Esq. • Ghislain Gouraige, Jr. • Senator Daryl Jones • Tomas A. Mestre  
Arva Moore Parks McCabe • Commissioner Jimmy Morales • William T. Muir, Esq. • Larry Olmstead  
Ann E. Pope • Anna K. Rentz • Muriel Rudolph • Henry C. Tie-Shue • Robert H. Traurig, Esq.

**Ruth Shack, President • 200 South Biscayne Boulevard • Miami, FL 33131-2343  
305.371.2711 • Fax 305.371.5342 •**