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BUILDING BETTER COLLECTIONS: CREATIVE WAYS TO WORK WITH DONORS

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New additions to museum collections typically come as the result of either donation or acquisition. Most museums handle outright donations much more frequently than acquisitions through purchase, trade or other means. Besides an outright donation or gift, arrangements with a donor can take a variety of forms including bequest, promised gift, fractional interest gift, bargain sale or lifetime gift. Museum directors, curators, registrars and other staff or volunteers who have contact with potential donors should have some basic knowledge of these methods of donation. Each differs in the benefits offered to the donor and the institution.

Bequest

In a bequest, the donor wills the object or collection to the museum. This allows the donor to retain the donation during his or her lifetime while at the same time insuring that the items will end up where the individual wants them. The bequest can help eliminate family estate battles since some of the worst feuds arise over the possession of personal property. A bequest offers the possibility of a sizeable tax deduction. The IRS taxes estates in excess of $600,000 at a beginning rate of 37% to a maximum of 55%. These same estates can claim an unlimited estate tax deduction for donations to qualified charitable organizations.

Unfortunately for the museum, a bequest delays the donation for an undetermined period. Also, a donor may make changes to the agreement at any time without notice to the museum. Ask the donor for a copy of his or her will. This is private information, and if the owner provides a copy, keep it private! Obtaining a copy of the will can insure the legal name of the museum is correct and that the donor has not included restrictions that are inconsistent with museum policy. It is also important to make sure that there is an adequate description of the objects being bequeathed. Maintain regular contact with the owner. Otherwise, he or she may decide to change the will and give the donation to someone who remembers them.

A bequest may be particularly attractive to individuals who have the bulk of their assets invested in works of art or other collections. This type of individual could face the possibility of having to sell collection pieces if unplanned expenses, such as medical emergencies, arise. The bequest allows an individual to sell the property, if necessary, but names the beneficiary if the collection is still part of the estate when the owner dies.

Promised Gift

The promised gift is simply the owner's promise to make a donation at a specific point in the future. The donor needs to be aware that he or she receives no tax deduction until the gift is actually made. The donor, however, will probably be acknowledged at the time of the promise through a news release, press conference and/or reception. If the donor does not provide written confirmation, it is advisable to send a letter outlining the museum's understanding of the pledge or promise. Court rulings have held that the use of a pledge form is advisable (NRE Charles S. Payson, file #177095: N.S. SUR. CT. Nassau County. July 11, 1978). For a pledge to be enforceable, the donee must have taken some action as a result of the promise. One example would be if a museum undertakes construction of a building addition based on pledges of future monetary donations.

Fractional Interest Gift

The fractional interest gift is an option that allows a donor to take full advantage of available tax deductions. A donor has a five-year carry over period to claim charitable income tax deductions. If the value of a donation exceeds the amount the donor can claim in one tax year, the remaining value can be carried over for up to five years. If this period is not sufficient to absorb the tax benefit, the donor might consider a fractional gift.

In a fractional gift situation, the donor may give a portion of his or her entire interest so the museum can receive one-half ownership (or more or less). The fractional value of the collection donated to the museum is then available to the donor as a deduction. To meet IRS requirements, the museum must have the option of controlling the collection for a fraction of the year equal to it share of ownership. It is not necessary for the museum or charity to exercise its option of possession each year.

In a tax court ruling (Winokur Commissioner, 90 T.C. 733, 1988) it was determined that "the charity simply must have the right to interrupt the donor's possession and have physical possession of property during each year following the donation equivalent to its undivided interest in the property." There are two important limitations in the Winokur decision. First, the gift must include language allowing the charity to possession each year and there must be no prearrangement either verbally or in writing between the museum and donor regarding possession.

Once the museum is part owner of the collection, it must be responsible for its share of insurance and other related expenses. The donor may, however, provide for the museum's share of the cost as an additional donation to the institution. Along with the fractional gift agreement, the museum should request that the donor consider making a bequest of any remaining interest owned by the donor at the time of his or her death. This protects the museum should the donor die before completing the full transfer of title.

Bargain Sale

A bargain sale occurs when a museum agrees to purchase a collections piece for a discounted price. The seller/donor receives the sale price plus a charitable deduction for the portion of the fair market value donated to the museum. The burden of obtaining a qualified fair market appraisal rests with the seller/donor. The museum should acknowledge on the sale contract that it is purchasing the object for less than fair market value.

While tax brackets differ for each seller/donor, a bargain sale can potentially provide the person with more income, when tax savings are considered, than an outright sale. This is especially true since the original purchase price can be allocated to the sale price at the same ratio as the fair market value to the bargain sale price. For example, a person purchases a painting for $30,000. The painting is later appraised at $100,000, but the owner agrees to sell it to a museum for $50,000. The owner is selling the painting at half the value and as a result can deduct one half of the original cost, or $15,000, from the sale price in determining capital gain. In this case, the person has a capital gain of $35,000.

The bargain sale can be made in installments to spread out the seller's/donor's capital gain and to lessen the museum's need for cash flow.

Lifetime Gift

Lifetime gifts of personal property to a qualified museum result in a immediate income tax deduction for the donor. Also, because the property will no longer be part of the donor's taxable estate, an additional estate tax benefit can be achieved. The technical rules with regard to the amount of the deduction available to a donor must be carefully followed. Lifetime gifts present an attractive alternative to the donor when both income tax and estate tax benefits are achieved.

Conclusion

Special agreements with donors, such as those briefly outlined above, can involve complicated legal arrangements. The assistance of a qualified attorney is recommended.

Sources

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