Discussion Problem 1 – Family Involvement

You have been Harry and Sally Magnate’s estate planning attorney for over 20 years. Harry and Sally have a successful real estate development company and have amassed considerable wealth during their lives. They have three children and a number of grandchildren, all of whom have been adequately provided for through the company and the excellent estate planning techniques you have put in place for them. Harry and Sally both feel a need to give back to the community and would like to see their nonbusiness assets go to support the arts in their community. There is a local arts council that has been successful in developing a local art museum as well as a theater company in the community. Like many of these organizations, however, support varies and financial stability for the programs is uncertain. Even with the considerable boost the gift from Harry and Sally would provide, Harry and Sally are concerned that the arts council board, which lacks strong financial leaders in the community and instead consists of creative and artistic visionaries, lacks the resources and talent necessary to handle a gift of this size. Harry and Sally have asked you if there are any options available to them to support the arts council or any successors in perpetuity without giving control of the assets directly to the arts council. Because their three children and grandchildren all reside in the community and are supporters of the arts, Harry and Sally would be amenable to an arrangement that allows future generations to be involved in continuing the philanthropic activities of Harry and Sally. But, Harry and Sally want to ensure that the funds are always used in their community and are used only to support the arts.

1. Can the objectives of Harry and Sally be met with a donor advised fund at the local community foundation?

2. If Harry and Sally wish to ensure the involvement of family in perpetuity, would a Type I supporting organization meet their objectives?

3. Would the conclusion be different if Harry and Sally would like for the charitable donee to employ one or more of their children or grandchildren?
Discussion Problem 2 – Funding with Closely Held Business Interests

When he was in his 30’s, John Trucker founded a trucking business with his brother, who never married and has no children. Now in his early 60’s, John’s interest in the trucking business is worth in excess of $400 million. John has two sons and a daughter. One son is a successful lawyer and the other a neurosurgeon. His daughter, who is unmarried, has worked in the business with John for 10 years. John wants to leave half of his accumulated wealth to his family, but desires to devote the other half to charitable causes. John is not certain at this point whether his daughter will be able to run the company successfully after his death. He does know that he wants to treat his three children fairly even though two of them do not work in the business. John is interested in undertaking some lifetime charitable giving, but anticipates that a substantial portion of his charitable giving will be testamentary. His children are close and all share John’s desire to give back to the community. He is certain that his children would be able to work together on charitable giving after he is gone. John’s brother, who owns 50% of the business is close to all of John’s children but also shares John’s charitable objectives.

1. Would a private foundation be an appropriate vehicle for John’s family to carry out their philanthropy? How would an anticipated sale of the business either during John’s lifetime or at his death affect this?

2. If the business will not be sold, could a supporting organization or donor advised fund solve any problems associated with transferring shares of a closely held business to a donor advised fund?

3. Are there any charitable vehicles that could enable John to achieve some tax benefits during his lifetime?
Discussion Problem 3 – Income Tax Considerations

Sam Mogul started buying rental real estate shortly after graduating from college. Sam recently turned 65 and met with his estate planning attorney to talk about his philanthropic goals. He never married and has no children or other near relatives. His real estate holdings are currently valued at $500 million and are generally held in separate, single-member limited liability companies, although several parcels are titled in Sam’s name. Sam’s income has increased, along with the income tax rates, and he anticipates selling some real estate over the next several years. Sam expects to leave his entire estate to charity, but has not yet developed definitive plans for the types of charitable activities or the charities he would like to support. Sam would like to start making some charitable gifts now to offset his income taxes. He would also like to understand the options available to him to maximize the income tax benefits of lifetime charitable gifts even though he does not yet know what organizations or types of charitable programs he would like to support. He plans to devote some time and resources over the next several years to developing a plan for deploying his assets for charitable purposes during his lifetime and after his death. Sam has expressed some concerns about the administrative burden of a charity. Having spent most of his adult life managing his rental properties, he would like to slow down and eventually spend more time traveling. He is also concerned about ensuring that his charitable objectives are met after his death and is uncertain who would carry out his objectives.

1. What type of charitable donee would enable Sam to maximize the income tax benefits of a charitable gift?

2. If Sam determines that a donor advised fund is the best vehicle for his giving, how does he ensure that the sponsoring organization uses his gifts to carry out his intent following his death?

3. Sam has talked to his local community foundation about a donor advised fund, but is concerned that it will not be able or will be unwilling to carry out some of his anticipated charitable objectives in other areas of the United States after his death. Is there another alternative that would address these concerns?

4. Would a supporting organization offer any benefits to Sam that would not be available with a donor advised fund?
**Discussion Problem 4 – Charitable Activities**

Steve Works and his wife, Mary, have been talking to their estate planning lawyer about establishing a private foundation. Steve retired at a relatively young age after amassing considerable wealth from the sale of a leading technology company founded by him shortly after graduating from college. Steve and Mary now wish to turn their attention to using their wealth to make a difference in the world. Steve and Mary are strong proponents of education and reaped the benefits of scholarships to college enabling them to pursue an education that otherwise might not have been available to them. They would like to use their foundation to provide scholarships to deserving high school seniors who lack the financial means to attend college so that others can have the opportunities afforded them through higher education. Steve and Mary understand that many private foundations make grants to other charitable organizations. While they would like to conduct some grantmaking through the foundation (particularly to satisfy pledges they have made to several universities), they would like to devote their attention to certain projects related to early education, such as the establishment of preschools in poverty-stricken communities, and anticipate direct involvement in these projects and expect to hire staff to assist with the operation and management of these projects.

1. Given their desire to be directly involved in the charitable donee’s activities, what type of charitable donee would best meet the objectives presented by Steve and Mary?

2. If Steve and Mary decide to use a private foundation, can the foundation carry on direct charitable activities?

3. What issues should be considered if Steve and Mary anticipate paying existing pledges made by them from the foundation?

4. Do the scholarships present any issues if the foundation is a private foundation or a supporting organization? What if the foundation is a private operating foundation? Could the scholarship program be handled through a donor advised fund established by Steve and Mary or the foundation?

5. Steve and Mary accepted your advice and created a private operating foundation. Five years later, they tell you that they want to encourage (i.e., lobby) local governments to allow charter schools, invest significant sums in start-up Ed-tech companies, and otherwise support good social causes that you have told them do not qualify as ‘charitable’. They have also been contributing significant amounts to their foundation and making other charitable contributions, and have significant contribution carry-overs. What other vehicles should they consider?