



Lowenstein Sandler's Trusts & Estates Podcast: Splitting Heirs

Episode 7 -
Hedge Fund Guy and the Terrible, Horrible, No Good
Very Bad Statue

By [Warren Racusin](#), [Lesley Adamo](#), [Gabriel van Aalst](#)
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Gabriel van Aalst: And I've even heard of colleagues in the field who have been gifted farms. So they run an orchestra, but they also run a farm that has been gifted to their symphony, and are required to keep it in perpetuity because of the gift.

Warren Racusin: Do they teach the sheep how to play the clarinet or stuff like that?

Gabriel van Aalst: No.

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Warren Racusin: From the law firm Lowenstein Sandler, this is Splitting Heirs. I'm Warren Racusin.

A very wealthy hedge fund guy wants to make a very big contribution to his very favorite college. He's thinking about taking their performing arts center and expanding it: production center, world-class performance spaces, great amenities for the students, even a gym that they, and only they, can use. There's only one problem. The existing center is named after another hedge fund guy, and there's a big statue of the guy in the lobby. Our hero hates that hedge fund guy, hates the statue, and wants to change the name of the place and get rid of the sculpture. How do they navigate past the name and that statue?

Before we get started, one of our favorite listeners asked us a question about our last episode, The Renoir Spelling Bee, "What ever happened with the Renoir?" And I realized when she asked that we had never told anybody. If you remember, that's the piece of art that our executor forgot to mention when we were filing the estate tax return. So what did we do? We filed a supplemental return. We reported the Renoir. It was a drawing, actually, worth about \$120,000. We paid the additional estate tax. No one went to jail, and as far as I know, everybody lived happily ever after. So, so much for that.

Warren Racusin: So, turning to today, if you're a baseball fan, you know there was once a pitcher named Joaquín Andújar. Pretty good pitcher, and a little bit of a different kind of guy. And Andújar once said, "Everything in baseball comes down to one word, one word. What's the word? You never know." Estate planning can be pretty complicated too, but basically, everything about estate planning comes down to three boxes: the family box, the charity box, and the tax box. The more you put into the family box, the more you may have to put into the tax box. The more you put into the charity box, the less you have to put into the tax box, but the less there is to go in the family box. So there are choices that you have to make.

Today, we're going to talk about understanding the charity box: its shape, size, and what you can put into it. I'm joined by my partner, Lesley Adamo, Vice Chair of our Tax Group, to talk about the how and the what of charitable giving, and by Gabriel van Aalst, the president and CEO of the New Jersey Symphony, to share with us his thoughts about why putting dollars into the charity box is so important, and how you get folks to do that. So, let's dive right in.

Lesley, this is a podcast about estate planning, but there's a whole income tax side to charitable giving as well that you can save dollars, save tax dollars, using them during your lifetime. And there's nothing better in my view than doing planning that you can enjoy and see the fruits of during your lifetime, so let's talk about that a bit first. Why don't you share some thoughts with us?

Lesley Adamo: Okay. On the income tax side, generally speaking, you can get a deduction against your taxable income if you make a contribution to a charitable organization. So, the after-tax cost of a charitable donation is the amount of the donation, less the reduction of your taxes for making the contribution.

Most people make charitable contributions to public charities, United Way, Red Cross, your church or school, and other kinds of organizations like that. Now, the IRS and Congress want you to be charitable, but not too charitable. You can only take a deduction for a cash donation to a public charity up to a percentage of your income. It is currently set at 60%, as a result of the 2017 Tax Cuts and Jobs Act. So, if you have \$100,000 of income and you make a cash donation of \$60,000, you can immediately write off all \$60,000. But if you make a donation of \$70,000, you can only write off \$60,000 the year you make the donation. The other \$10,000 carries over and you can use the deduction in subsequent years.

Notably, when the pandemic happened, Congress decided that charities would need even more help. So for 2020 and 2021, it eliminated the 60% cap, but until further notice, we are again limited in our ability to take deductions for donations to charity.

Warren Racusin: Right. So that's the simple part, Lesley, but there are a couple of other types of charitable boxes also, right?

Lesley Adamo: Yeah, certainly. Some wealthy families create private foundations, family-controlled charities that they give money to and then dole out the money for

their favorite cause or causes. The government likes these charities too, but because they're run by the families who could have ulterior motives, there are additional restrictions as compared to public charities. For one, the deduction for the donation to a private foundation is limited to generally 30% of the donor's income, and private foundations themselves are subject to a number of rules, creatively called the Private Foundation Rules, that put guardrails around their activities, preventing them from engaging in self-dealing transactions in certain types of aggressive investments, et cetera. Private foundations must also distribute at least 5% of the fair market value of its non-charitable use assets from the preceding year to charities or be subject to penalties. Nevertheless, many of our family office clients have private foundations as part of their overall tax and estate planning.

Warren Racusin: Right. So, they've got basically a 5% annuity that they've got to dole out to make sure that the charity's getting some benefit out of these family-controlled private foundations every year that just doesn't sit inside the charity, right?

Lesley Adamo: That's right. Exactly. Sometimes if a client is looking to be able to give to their favorite charitable causes, but not be subject to the restrictive Private Foundation Rules, they provide a new type of charity that combines some of the best features of a private foundation with that of a public charity.

Warren Racusin: There's a new charitable kid in town, right?

Lesley Adamo: That's right. That's right. We're talking about donor-advised funds. They're an account established at a public charity, usually organized by a financial institution. A donor-advised fund allows donors to make a charitable contribution, receive a deduction as if they're giving to a public charity, and then recommend grants from the fund over time. They're treated as public charities, so you receive a 60% deduction rather than a 30% deduction. But here's the interesting part. The donor-advised fund is not subject to the same restrictions as a private foundation, so unlike a private foundation, a donor-advised fund does not have an annual distribution requirement.

Warren Racusin: Right. So, you can build up a charitable fund over time in a donor-advised fund but make contributions only when and to which charities you want, right?

Lesley Adamo: Right. Now, technically, you have to request to the umbrella charitable organization to make the contribution.

Warren Racusin: Right. They're not required to make the contribution, technically. You only make the request. But unless you're requesting a contribution to the Bernard Madoff Institute for Integrity Investing or your favorable local terrorist group, the requests are always approved, right?

Lesley Adamo: In my experience, 100%.

Warren Racusin: Right. So, if donor-advised funds are so good, why do families sometimes create these private foundations that have so many restrictions on them, Lesley?

Lesley Adamo: For a couple of reasons. For one, private foundations give the family more control over investments and management of the funds. Plus, families often want to teach their children the importance of being charitable, and so they'll put them on the board of the foundation. They'll give them a budget from the funds to select charities that are important to them, and otherwise get them involved in philanthropy.

Warren Racusin: Right. So, let's get back to where we came in. First, the three boxes. What happens for estate tax purposes? Would they bequest to charity in a will? We've been talking about the income tax side, which is really important, but how about the estate tax side of things?

Lesley Adamo: Anything you leave to a charity is deductible, dollar for dollar. Doesn't matter if it's to a publicly-supported charity, a private foundation, or a donor-advised fund. So for any dollars you put into the charitable box, no dollars go into the estate tax box.

Warren Racusin: Right. Of course, none of those dollars go into the family box either, like I said earlier, right?

Lesley Adamo: Right. But people have their favorite causes and often they feel that giving something meaningful to their chosen cause is as important as taking care of their families. Now, sometimes they have strong feelings about how the money should be used. In fact, that's a growing trend, especially among younger donors. A lot of people who've made tons of money earlier, either in the tech world or in hedge fund land, are very particular about how their money is going to be used.

Warren Racusin: Yeah. We do a lot of charitable gift agreements between wealthy folks and charitable organizations, and they're not willing to just give the money, to set it and forget it. They set goals, they articulate very specific things that the charities must do, and they keep close track of whether the charities are using the funds as they intended. Which brings us back to our hero, the donor who has a problem with the statue and the name.

Before we get there, or as we get there, let's chat with Gabriel a bit, who I'm sure has seen his share of very particular donors. So first, Gabriel, what's the most unusual request you've ever gotten from somebody who wanted to benefit the New Jersey Symphony?

Gabriel van Aalst: We get unusual requests all the time, but hopefully we are able to work with the donors to envisage a future where their impact on the Symphony is realized. We have some strange gifts given to us as well. You know, we often have people call and there's an old piano in someone's house, and someone's grandfather used to play. The piano is 40 years old, and there are donors who would like to give us those pianos. We've had houses that due to the timing of it got destroyed by Hurricane Sandy. And I've even heard of colleagues in the field who have been gifted farms, so they run an orchestra, but they also run a farm that has been gifted to their symphony, and are required to keep it in perpetuity because of the gift.

Warren Racusin: Do they teach the sheep how to play the clarinet or stuff like that?

Gabriel van Aalst: No. I can imagine a world where there's some social media creativity around integrating the farm animals into the orchestra. Maybe that's how they do Peter and the Wolf there.

Warren Racusin: Yeah, really, really. It's interesting, it's good. Some interesting memes come to mind.

Gabriel, The New York Times has called the New Jersey Symphony "this essential orchestra." In addition to playing all the classic repertoire, you commission works by new composers, particularly younger, more diverse artists. And I know, because I happen to be a proud member of the board of trustees. The Symphony strives for diversity and you work towards the Symphony's ongoing goal of bringing classical music to the entire state of New Jersey. But being an essential orchestra takes a lot of time and effort and it costs a lot of money. Can you share with us the Symphony's annual budget? What does it cost - in general terms - to be essential?

Gabriel van Aalst: That's a great question. Each year our budget is roughly \$14 million, so if you were to put a price tag on being an essential orchestra, that price tag is \$14 million.

Warren Racusin: And I know this, but maybe you can flesh out the details a little bit more. Ticket sales and subscription sales raise some portion of that, but it's not a majority by any means of the funds that are needed to make up that \$14 million budget, right?

Gabriel van Aalst: That's correct. Each year we sell roughly \$4 million of tickets. Now, that's what I would call the pre-COVID number, and we'll talk a bit about this in a moment, but COVID has obviously taken the steam out of ticket sales in all industries, whether it's going to the theater, whether it's going to the cinema, or coming to the symphony. So at the moment, as we build back after the pandemic, we're selling roughly \$3 million of tickets.

Warren Racusin: That other \$11 million has got to be made up from somewhere, and that comes from charitable contributions. How much do you get from individuals and how much do you get from foundations and other sort of institutional places?

Gabriel van Aalst: The breakdown changes every year a little bit, but the large patterns are we get about \$1 million from the government each year, we get about \$2 million to \$3 million from corporates and foundations. And then the remainder, which ends up being around \$6 to \$7 million, comes from individuals, whether that's through philanthropic giving, through legacies, through multi-year gifts, through events. Yeah, so it's a really diverse group of funders, whether it's the government or an individual who decides to give \$50, \$500, \$50,000, and hopefully sometimes \$500,000.

Warren Racusin: And you must frame the Symphony's mission in a way that has an impact on the number and the magnitude of contributions, right?

Gabriel van Aalst: Absolutely. The mission of the New Jersey Symphony is to connect with the people in diverse communities of New Jersey through the power of live

symphonic music, to inspire, entertain, and educate. And when we're talking about donors, it's often important for donors to understand the impact of their giving. And whilst most of the donors who give to the Symphony are regular concert attendees, many of them are passionate about a particular area of work that the orchestra focuses on. So each year, we perform a main stage season in one of our five venues across the state, which can be about 60 performances.

But at any one day, the Orchestra is out in the community, performing through our education work. We have a Youth Orchestra program through our community partners program, where we send smaller ensembles out, whether it's in a hospital setting or going to a library or going to a school. And particular donors find particular areas of the work that the Symphony is doing that inspire them to give that they want to see the impact of their donation out in the community, in whatever form it is, whether it's the core performances or our Music and Wellness program or our education programs. And ultimately, it's that impact that inspires them to give.

It's kind of a common misconception that someone will walk into the symphony office and hand over a check, and then they disappear. And you were talking about this earlier. So often, it's actually a conversation for us to understand the impact that the donors want to have, and then linking that to the work that we do so the donors can feel that their gift has a specific place within the community of the Symphony.

Warren Racusin: And so, donors and the Symphony have the same goal, to benefit the Symphony in a variety of different ways, but donors often have different views than you do about how to get there, and we get involved on both sides in those discussions in a lot of different ways. How do you and the Symphony and other organizations of the Symphony, how do you deal with it? How do you get folks from here to there and get everybody to yes?

Gabriel van Aalst: I mean, again, it's a great question. And often, it's about conversations and understanding the intention and the impact again. I talk about impact a lot, but it's so important to the work that we are doing. So it's really about understanding what it is that the donor is wanting to do with their dollars. Who are they trying to help? Because obviously, they're trying to help the Symphony, that's absolute, for sure, but ultimately, is it about trying to help the audiences in the hall, or a kid who's never picked up a violin in their life?

Warren Racusin: And usually those conversations are quite amicable. Sometimes they can get a little bit more contentious. You and I both know about a very famous example-

Gabriel van Aalst: Absolutely.

Warren Racusin: ... of an orchestra and a performing arts center that were at loggerheads and eventually found their way through to a resolution. You want to chat about that just a little bit?

Gabriel van Aalst: Yeah, absolutely. I think what you're referring to is the renaming of Avery Fisher Hall to the David Geffen Hall at the Lincoln Center. Is that-

Warren Racusin: Exactly.

Gabriel van Aalst: So for those who are less familiar with that turn of events, for many years, the main orchestral hall at the Lincoln Center was called the Avery Fisher Hall. It's the home of the New York Philharmonic, amongst many other performances that take place there every year. And that hall is a wonderful hall, but it is out of date, and it has an acoustic that is, let's call it challenging. And the way that the audience experiences live music there, it's very of the time that it was built, let's say. There has long been a desire to refurb that hall. It's a beautiful space, but it's time for an upgrade, and that upgrade came actually with a cost, a price tag of approximately \$500 million. So, that's a lot of New Jersey Symphony Orchestras in that upgrade.

In order to raise that kind of money, when you're talking about donors who are making not seven-figure gifts, not eight-figure gifts, but nine-figure gifts, something comes with that. And usually you need a lead gift in a campaign to raise that sort of money, and usually a lead gift involves, in this sort of circumstance, the naming of the hall.

Now, this fundraising was done as a collaboration between the Lincoln Center and the New York Philharmonic, so when the Orchestra and the Lincoln Center were looking to solicit and entice a donor to make the lead gift for the renovations of the hall, they came up against an issue. And that issue was that originally, the Avery Fisher family had given a \$15 million gift, which was an unimaginable amount of money at the time. And with that gift had come the naming rights of the hall in perpetuity, because it was never envisaged that in 10, 20, 30, 40, 50 years time, 100 years' time, they'd never envisaged that they would have to do such a large fundraising effort to redo the hall.

And out of that conundrum came a little bit of saber-rattling, because together, the Lincoln Center and the Orchestra wanted to solicit a major gift, a lead gift to get them a huge dent into that \$500 million price tag, but they needed to be able to name the hall. So, there was lots of negotiation back and forth, and eventually where it came down was that essentially, the Lincoln Center would buy back the naming rights from the Avery Fisher family for the same amount of money that had been paid, and they would guarantee that a member of the family could be on the board. They would continue to give lots of recognition to the family for their giving because the Center and New York and the New York Philharmonic had taken advantage of that gift for such a long time.

But in doing so, it freed up the hall to be able to be renamed. In this case, it was David Geffen, film producer extraordinaire, and he made a gift of \$100 million, which in turn became the lead gift for that campaign, the lead gift for the refurbishment of the hall. And in doing so, everyone walked away with their pride intact. Everyone walked away happy with the result, and especially the Lincoln Center and the New York Philharmonic, who are now getting a new home. But it wasn't without its tensions, and what I would call in Australia "argy-bargy," but I'm not sure if that translates here, but hopefully the intention gets across.

Warren Racusin: And of course, the fact that the family got this \$15 million back didn't hurt, and that's kind of what happened to our hedge fund titan. The family agreed to move the statue to a less obtrusive place than the entrance to the building. Hedge fund guy agreed to let the family name some of the practice rooms and other spaces after themselves, and we all moved on. Now, he didn't pay the family anything though, because well, you know.

That's all we got for today, and that puts a ribbon on the first season of Splitting Heirs. Thanks to Gabriel van Aalst and Lesley Adamo for a great discussion today. Thanks to everyone at Lowenstein who makes this possible, the incomparable Linda Aschettino, Rosa Colon, Melanie Canto, Kevin Iredell, our head of marketing. Thanks to our production assistant for this episode of Lowenstein Sandler, summer associate, the mighty Peter Quinn, thanks to the great folks at Good2bSocial, and most of all, thanks to all of you. We have gotten thousands of listens so far and lots comments, and we couldn't be more grateful. You all are the best. We think you're grand. See you soon for season two. Until then, as we say in these parts, have a good one.

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