the rise of the DONOR ADVISED FUND

High-profile gifts and new understanding of tax benefits have turned attention to a growing trend in philanthropy

BY NATALIE JACOBS

When Mark Zuckerberg and Priscilla Chan gave 18 million shares of appreciated Facebook stock (now worth nearly $1 billion) to the Silicon Valley Community Foundation (SVCF) in late 2013, they, perhaps unwittingly, put the words "donor advised fund" on everyone's lips. Or at least the lips of anyone who pays attention to philanthropy trends, which, if the continued attention to this matter from both sides of the judgement coin can be an indicator, is quite a few people.

One recent defense of the couple and their philanthropic decision was written by David J. Herzig, a law professor at Valparaiso University, in an op-ed for the Washington Post dated December 9, 2015. Herzig notes that there have previously been only two "established boxes" into which charitable donations funneled – through an independent family foundation or by writing checks to organizations directly. Neither, says Orin Green, a local financial advisor who sits on the board of San Diego's Jewish Community Foundation (JCF), is entirely efficient.

"For people whom charitable giving is a big part of their life, a donor advised fund is a way to do that more efficiently and often to save more in taxes than they might if they were just giving a check directly to the organization," Green says.

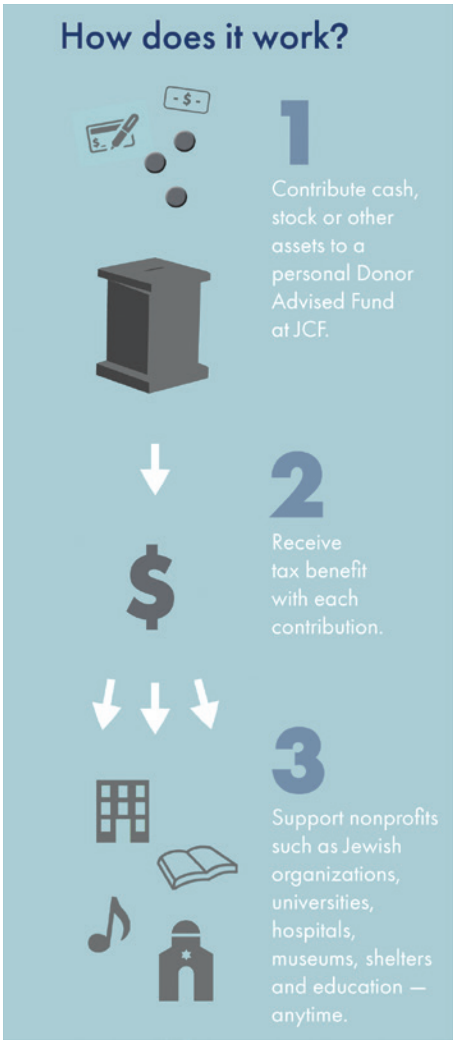
Donor advised funds allow for gifts of appreciated stock, as in the Zuckerberg case, real estate and business assets, and, of course, cash.

In his exploration of the "Philanthropic Revolution" for the Los Angeles Times, Jack Shakely, president emeritus of the California Community Foundation in L.A., asserts that the growing popularity of donor advised funds are a matter of economics.

"A million-dollar foundation can easily cost more to run than it gives away," he wrote in March of 2014.

"In many cases," says Green, "[a donor advised fund] can provide the same resources for a lot less cost and complexity. ... A lot of times you can do the same kind of giving without having to duplicate the overhead and tax costs, so I think we're seeing a lot more large donor advised funds than in the past."

In the eyes of the IRS, contributions to donor advised funds are treated as gifts to public charities, which distinguish them from donations made to private foundations in two main ways. First, donors can claim a higher charitable contribution deduction – up to 50 percent of adjusted gross income versus 30 percent if the donation were made to a private foundation. Second, donor-advised funds are not subject to



GRAPHIC COURTESY JEWISH COMMUNITY FOUNDATION minimum annual payout requirements or other restrictions that are placed on private foundations.

Though the donor advised fund has been around since the 1930s, the IRS in 2008 noted that its popularity proliferated in the 1990s when "for-profit financial investment firms began to establish affiliated nonprofit organizations to maintain donor advised fund accounts." Known as commercial DAFs, they were essentially used as shells for the for-profit investment firm to make money on administration fees from the DAFs, while providing havens for "donors" to avoid paying taxes on their assets.

In one instance of egregious misuse of the intention of donor advised funds, a federal court in 2006 found that a foundation called New Dynamics was designed to "warehouse wealth" by allowing donors to "contribute" to a donor advised fund that was then allowed to be distributed for their own personal interests. In a guide sheet published by the IRS, it is noted that the court found donors to the New Dynamics Foundation (NDF) were "encouraged to reformulate their requests to disguise the true nature of the expenditures involved," and were "allowed to treat NDF as a conduit for accomplishing the twin tax avoidance goals of building up their assets tax-free and then siphoning off the accumulated wealth to pay for personal expenditures."

That, obviously, is not the way donor advised funds are supposed to work, and following that case, the federal government passed the Pension Protection Act, which refined the rules for donor advised funds.

Still, skepticism remains. Notably, Salesforce CEO and Bay Area philanthropist Marc Benioff criticized Zuckerberg's donor advised fund contribution, saying "You give your money to SVCF and you get your tax write-off. Where's it gone? What good is it doing now?"

Benioff's concern comes from that point about donor advised funds not requiring a minimum annual distribution. While the money can only be used for charitable donations, funds can be put into the account one year and not used for several years, or ever. It's unclear why someone would lock money and assets up just to avoid a tax payment if there is no intention to ever use it, but that's the argument.

Aside from the headline-making contributions, donor advised funds also make this kind of tax-wise, fee-aware charitable giving accessible to those who reside outside the top one percent. At San Diego's Jewish Community Foundation (JCF), donors can start a fund with $1,800, and grants can be made in amounts as little as $100. Annual fee to maintain the account is $300 or 1.5 percent of the fund's value.

"I think the general perception is charitable giving strategies are probably there for the super-wealthy," Green says, "[but] they're not."

For Hanukkah one year, Janet Acheatel, a long-time financial advisor who chairs the investment committee at the Jewish Community Foundation, started three donor-advised funds with $2,000 in each of her three adult children's names.

"I wanted to teach them how endowments work," Acheatel says.

The idea Acheatel wanted to pass down to her kids was that they could give in little amounts, both into their fund and out to the organizations of their choosing.

"It's been really exciting because sometimes they tell us what they did and sometimes they don't. One of my boys now has started going to the Men's Event with his dad and he does his annual Men's Event campaign from his donor advised fund. It's become kind of a thing that came out of that gift."

Sharleen Wollach, director of philanthropy operations at JCF, points out that synagogue dues and High Holiday contributions can also be made through a donor advised fund, as synagogues are nonprofits.

The Jewish Community Foundation holds more than $280 million in assets, in donor-advised and other funds. For the years 2014-15, JCF reports its funders granted more than $107 million from donor-advised funds to more than 1,400 organizations. The majority of those grants were between $100 and $1,000.

A donor-advised fund can exist in perpetuity and JCF encourages donors to continue the legacy of giving through their children.

"We have one for our family," says Green, "and we actually have it set up that when my wife and I pass away, funds are set up for our kids to continue giving."

Their kids – aged 16, 12, 10 and 6 – are also part of the conversation about where to give the funds now, which, Green says, grew out of his oldest son's participation in JCF's Teen Foundation program.

To continue the charitable education of her family, Acheatel next wants to open a fund for her three children to administer together, and one for her grandchildren (currently eight of them) to grant from.

Writing for the Chronicle of Philanthropy, Ray Madoff in an op-ed dated Jan. 13, 2014, notes "while giving to most charities has remained largely flat in recent years, contributions to donor-advised funds are growing at eye-popping double-digit rates." On the positive side, he notes these funds "democratized philanthropy, making it easy for anyone – even those with just a small amount of money – to create an endowment that can be available with a click of the mouse whenever the urge to give strikes." ✡

"For people whom charitable giving is a big part of their life, a donor advised fund is a way to do that more efficiently and often to save more in taxes than they might if they were just giving a check directly to the organization," Green says.

The Jewish Community Foundation works with local financial advisors to share information about the details of donor advised funds. Philanthropy officers are also available directly through JCF. Find more information at jcfsandiego.org.