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OP-ED CONTRIBUTOR

Dog Eat Your Taxes?

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THE latest news from the Palace, that Leona Helmsley left instructions that her charitable bequest of as much as \$8 billion be used for the care and welfare of dogs, rubs our noses in the tax deduction for charitable gifts and its common vehicle, the perpetual private foundation. Together these provide a mechanism by which American taxpayers subsidize the whims of the rich and fulfill their fantasies of immortality.

The charitable deduction enables people to donate as much of their assets as they like for charitable purposes without paying a tax. While some choose to contribute to broad public goals, the law does not require it. In recent years, charitable status has been recognized for organizations with purposes as idiosyncratic as promoting excellence in quilting and educating the public about Huey military aircraft. Indeed, Mrs. Helmsley might have limited her beneficence to the Maltese breed of dogs she favored, and that, too, would have been allowed as a "charitable" purpose.

If this were only a matter of Leona Helmsley wasting her own money, no one would need to care. But she is wasting ours too.

The charitable deduction constitutes a subsidy from the federal government. The government, in effect, makes itself a partner in every charitable bequest. In Mrs. Helmsley's case, given that her fortune warranted an estate tax rate of 45 percent, her \$8 billion donation for dogs is really a gift of \$4.4 billion from her and \$3.6 billion from you and me.

To put it in perspective, our contribution to Mrs. Helmsley's cause equals approximately half of what we spend on Head Start, a program that benefits 900,000 children.

What will we get for our \$3.6 billion? An eternal monument to Leona Helmsley's generosity toward dogs. Even the dogs will not benefit as much as one might think, because Mrs. Helmsley elected to disburse her bequests through the Leona M. and Harry B. Helmsley Charitable Trust.

Most such foundations perform no charitable work but only give money to organizations that do. The law requires foundations to spend a minimum of just 5 percent of their assets a year, thus helping ensure their perpetual existence, and their donors' immortality. In meeting this requirement, foundations are allowed to count fees paid to their trustees and other administrative expenses.

In 2003, legislation was introduced in Congress that would have required private foundations to devote the full 5 percent to charitable expenditures. But the foundations complained that this would threaten their

perpetual existence, and the bill did not pass.

Some people who establish perpetual charitable trusts may assume that their philanthropic dollars will go further if the trust distributes only its investment income and preserves its principal. Anyone familiar with the story of the goose that laid the golden eggs knows the importance of not spending principal. However, because a dollar spent today is worth more than a dollar spent several years from now, in many cases, the sum of payments made over time — even in perpetuity — never equals the value of the original principal. The true beneficiaries of perpetuity are the banks and trust companies that receive annual fees for managing foundations' assets.

There are other reasons the law should not encourage people to tie up their resources — and ours — for all time. The perpetual foundation is based on the assumption that people can make intelligent decisions about the use of resources far into the future. But a look back shows how flawed this thinking is. Would it really make sense for current policy to be dictated by the vision of someone living in 1930? 1630? 1230?

By setting aside assets for the uncertain needs of the future, we deprive ourselves of resources for addressing the obvious and compelling needs of today.

We should not give a blank check to support the whims of the wealthy. There should be a limit — a dollar amount or a percentage of the estate — on the estate tax charitable deduction. People could still give to charity as they like, but after a point they would be giving after-tax dollars. The deduction should be lower for bequests to private foundations than for money given directly to good causes.

We should also stop subsidizing immortality. Private foundations should be required to spend more of their assets on charitable work, even if it threatens their perpetual existence.

Until Congress makes these changes to the tax code, it is not just Leona Helmsley's fortune that is going to the dogs; it is our tax dollars as well.

Ray D. Madoff, a professor at Boston College Law School, is writing a book on immortality and the law.

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