

A NEW WAY OF THINKING



In his 1776 call to action, *Common Sense*, Thomas Paine wrote “[w]e have it in our power to begin the world over again.” Looking at the bigger picture, Paine said,

We have it in our power to begin the world over again. A situation, similar to the present, hath not happened since the days of Noah until now. The birthday of a new world is at hand . . . how trifling, how ridiculous, do the little paltry cavilings of a few weak or interested men appear, when weighed against the business of a world.¹

In September 2022, we bore witness to a new way of thinking, when Yvon Chouinard, the founder of Patagonia, Inc., an outdoor clothing retailer, gave the bulk of his company to a newly formed charitable organization, Holdfast Collective, which is dedicated

to fighting climate change and defending nature. According to Chouinard, “Earth is now our only shareholder.”²

The gift seems relatively straightforward. The bulk (98%) of Patagonia’s equity, consisting of nonvoting stock, was donated to Holdfast Collective, a tax-exempt organization qualified under Internal Revenue Code (IRC) section 501(c)(4). According to the Internal Revenue Service (IRS), “To be tax-exempt as a social welfare organization, . . . an organization must not be organized for profit and must be operated exclusively to promote social welfare. The earnings of a section 501(c)(4) organization may not inure to the benefit of any private shareholder or individual.”³ The balance of Patagonia stock, consisting of all of the company’s voting stock, was donated to a new trust, the Patagonia Purpose Trust. This trust is not a tax-exempt

entity but has a stated purpose of protecting the company’s values.⁴ The Chouinard family will continue to guide Patagonia’s purpose and activity by selecting and overseeing the Purpose Trust’s leadership.

Patagonia has consistently communicated the desire to care for planet Earth. According to Chouinard,

We started with our products, using materials that caused less harm to the environment. We gave away 1% of sales each year. We became a certified B Corp and a California benefit corporation, writing our values into our corporate charter so they would be preserved. More recently, in 2018, we changed the company’s purpose to: We’re in business to save our home planet.⁵



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The gift is designed to continue and expand that mission. After viewing the options available to them to expand the mission, the Chouinard family determined “there were no good options available. So, [they] created [their] own,”⁶ which resulted in the new ownership structure and the gift of the entire company. As a result, Patagonia’s profits, beyond what is reinvested in the company, are available to further Holdfast Collective’s purpose.

Such a transaction requires the consent of company owners. Even in a case where one family member owns an entire company, it makes sense to secure the support of other family members, because such a gift takes wealth from the family and dedicates it to other purposes. This is not to say that the Chouinard family did not receive a benefit in addition to the general benefits associated with making a gift to preserve the Earth. Had the family sold the company, that transaction could have caused a large income tax on the capital gain resulting from the sale (estimated to be \$700 million).⁷ Further, the transaction may have allowed the family to avoid the 40% estate tax that could have been imposed when the company passed to the next generation. Even still, the Patagonia transaction did not entirely avoid tax, as it is estimated that the donation to the Purpose Trust (the non-charitable trust) will result in the imposition of a federal gift tax of more than \$17 million. Furthermore, because Holdfast Collective is exempt from income tax under IRC section 501(c)(4),⁸ the donation of the non-voting stock did not provide the donor with a federal income tax deduction.

Although some have decried the avoidance of tax associated with the gift of Patagonia shares to Holdfast Collective, it is the U.S. Congress that created the tax benefits associated with the transaction. As Judge Learned Hand of the U.S. Court of Appeals for the Second Circuit (now famously) stated in 1934,

Any one (sic) may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one’s taxes.⁹

The gift by the Chouinard family is an example of a new way of thinking. Call it “one-pocket thinking” as opposed to “two-pocket thinking.” Much of the business and philanthropic world thinks in terms of two pockets, where money has two functions: what they “earn” in one pocket versus what they “give” out of a different pocket. According to two-pocket thinking, when there are sufficient funds in the “earn” pocket, then community support may be made from the “give” pocket. Contrast two-pocket thinking with one-pocket thinking. In one-pocket thinking, wealth is not binary, and decisions are made from one source: the values of the individual/family. Money is earned, spent, given or invested in entities that reflect the values of the wealth-holder, and thus creates a regenerative cycle. As such, the Chouinard family invested their wealth in fighting climate change and defending the Earth by creating a charitable entity and allowing it to invest in Patagonia, a profitable business with the same goals. As a result, a steady stream of income resulting from company profits is available to carry out this purpose.

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Of course, the media widely reports on big investments like the gift of Patagonia, or the Ford Foundation's commitment to invest \$1 billion from its endowment in mission-related investing.¹⁰ The Ford Foundation stated its goal as follows:

Using a deliberate and phased approach, the foundation will gradually carve out funds from its existing investment portfolio and deploy them over time into funds seeking to earn not only attractive financial returns but concrete social returns as well. Initial investments will focus on areas where the foundation has deep prior experience and sees both significant investment opportunity and significant alignment with its mission to reduce poverty and injustice.

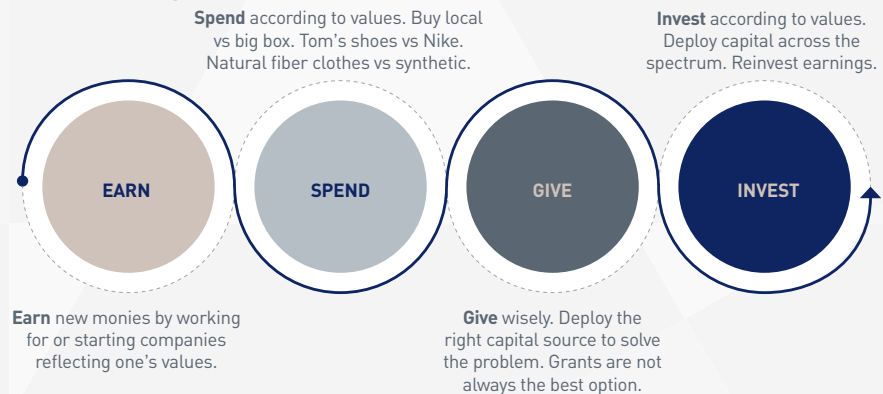
Yet, anyone can think this way. By deploying capital according to one's values, the financial behaviors of earning, spending, giving and investing support one another in a way that regenerates more wealth and more opportunity for those valued missions.

Time will tell if others follow the lead of the Chouinard family by dedicating profits to their mission. Nevertheless, it is possible for anyone to follow this path, even with modest amounts. Indeed, we can begin the world anew simply by changing the way we think about wealth, purpose and philanthropy.

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One Pocket Thinking in Action



Source: PNC Private Bank®

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Endnotes

- ¹ Paine, Thomas, *Common Sense*, Appendix, 1776 (reproduced online by Project Gutenberg, last updated 2021), <https://www.gutenberg.org/files/147/147-h/147-h.htm> (last accessed November 27, 2024).
- ² Chouinard, Yvon, Patagonia release regarding ownership, <https://www.patagonia.com/ownership/> (last accessed November 27, 2024), hereinafter Patagonia Ownership Release.
- ³ IRS, *Social Welfare Organizations*, <https://www.irs.gov/charities-non-profits/other-non-profits/social-welfare-organizations> (last accessed November 27, 2024).
- ⁴ Patagonia Ownership Release.
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ *Patagonia Billionaire Ducks \$700 Million Tax Hit by Giving it Up (1)*, Bloomberg Law, September 16, 2022.
- ⁸ IRS, *Donations to Section 501(c)(4) Organizations*, <https://www.irs.gov/charities-non-profits/other-non-profits/donations-to-section-501c4-organizations> (last accessed November 27, 2024).
- ⁹ *Helvering v. Gregory*, 69 F.2d 809, 810 (2d Cir. 1934).
- ¹⁰ Ford Foundation, Press Release, *Ford Foundation commits \$1 billion from endowment to mission-related investments*, April 5, 2017, <https://www.fordfoundation.org/news-and-stories/news-and-press/news/ford-foundation-commits-1-billion-from-endowment-to-mission-related-investments> (last accessed November 27, 2024).

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