

THE IRA CHARITABLE ROLLOVER

The IRA Charitable Rollover was first added to the Internal Revenue Code of 1986, as amended, under legislation enacted in 2006. It permitted individuals to roll over up to \$100,000 annually from an individual retirement account (“IRA”) directly to a qualifying charity without recognizing the funds transferred to the qualifying charity as income. While this initial provision expired on December 31, 2007, it has been extended several times. On December 18, 2015, Congress passed and President Obama signed legislation making the IRA Charitable Rollover provision permanent.

The following analyzes the IRA Charitable Rollover.

What is an IRA Charitable Rollover?

The statute uses the term “qualified charitable distribution” to describe an IRA Charitable Rollover. A qualified charitable distribution is money that an individual who is age 70-1/2 or older may direct from his or her traditional IRA to eligible charities. The provision imposes a maximum \$100,000 limit for charitable distributions from individual IRAs annually. An individual may exclude the amount distributed directly to an eligible charity from his or her federal gross income.

When will the IRA Charitable Rollover Provision Expire?

The IRA Charitable Rollover provision is now *permanent*. There is no expiration date – it is no longer a temporary tax extender provision. The IRA Charitable Rollover will remain in existence unless and until a new law is enacted eliminating or modifying the provision.

Does a Donor also Receive a Federal Income Tax Charitable Deduction when He or She Rolls Over Funds to a Charity using the IRA Charitable Rollover?

No. Under the IRA Charitable Rollover, a donor benefits by not having to recognize in federal gross income the amount distributed directly from his or her IRA to a qualifying charity. However, because a donor excludes this distribution from his or her federal gross income, he or she cannot take a federal income tax charitable deduction for the contribution. To do so would result in a double tax benefit for donors (exclusion from income and a deduction) and that is expressly prohibited.

To Which Charities May Donors Make Qualified Charitable Distribution under the IRA Charitable Rollover Provision?

Most contributions to *public charities* – other than supporting organizations – are considered qualified charitable contributions. However, distributions from IRAs to *donor advised funds* held by public charities *are not* considered qualified charitable distributions under the IRA Charitable Rollover provision.

Individuals can make qualified charitable distributions to a private operating foundation or to a private foundation that elects to meet the conduit rules in the year of the distribution.

Neither private non-operating foundations nor split-interest trusts (e.g., charitable remainder trusts) *are eligible* for special treatment as qualified charitable distributions under the IRA Charitable Rollover provision.

Will An IRA Distribution to a Fund Held By A Community Foundation Qualify for This Special Treatment?

Yes, distributions to almost all types of funds typically held by community foundations (e.g., scholarship, field-of-interest and designated funds) qualify. However, as noted above, a distribution to a donor advised fund will not qualify for this special treatment.

Is a Donor Limited to One IRA Charitable Rollover Distribution Per Year Or Can a Donor Request Multiple Distributions?

A donor aged 70-1/2 or older is limited to a maximum of \$100,000 in any one year as an IRA Charitable Rollover. However, there is no requirement that the entire amount be made in one transfer or that the entire amount go to a single qualified charity. A donor can request multiple direct transfers from his or her IRA to qualified charities in a year, but only \$100,000 will be excluded from income as an IRA qualified charitable distribution.

What if a Donor Wants to Contribute More Than \$100,000 to a Qualified Charity from an IRA?

The law limits the amount that a donor is able to exclude from his or her income to \$100,000. If a donor wishes to distribute more than \$100,000 from his or her IRA to charity, he or she cannot exclude the excess above \$100,000 from federal gross income. Instead, such excess amount is included in federal gross income and can be taken as an income tax charitable deduction, subject to the general rules pertaining to itemized deduction reduction and the applicable percentage limitations described below under “Definitions”.

Can a Donor Contribute IRA Funds to a Donor Advised Fund?

Yes, but as noted above, because such distributions do not count as qualified distributions from IRAs under these special rules, a donor will have to first recognize those distributions as income. The donor will be able to take an income tax charitable deduction for the amount of the contribution, subject to the general rules pertaining to itemized deduction reduction and the applicable percentage limitations described below under “Definitions”.

Which Donors Will Likely Benefit from the IRA Charitable Rollover?

Generally, the IRA Charitable Rollover benefits donors who itemize deductions and whose charitable contributions are reduced by the percentage of income limit. Traditionally, when an individual receives a distribution from his or her IRA and makes a corresponding charitable contribution, he or she must count the distribution as income and then receives a charitable deduction for any amounts he or she transferred to charity. For higher income

taxpayers, the charitable deduction they receive may not fully offset the taxes they must pay for receiving the distribution from their IRA. In such cases, donors would potentially benefit more by using the IRA Charitable Rollover provision when making a charitable deduction.

Other donors who may benefit include individuals who do not usually itemize their deductions and individuals in states where the operation of the state income tax law would offer greater benefits as a result of an IRA Charitable Rollover. New Jersey for instance does not allow an income tax for charitable contributions – so an IRA Charitable Rollover would benefit a NJ resident because he or she could exclude the amount distributed to charity from income.

In addition, the IRA Charitable Rollover will likely benefit donors whose charitable contributions are reduced by the itemized deduction reduction described below under “Definitions”.

How Does An Individual Make a Qualified Charitable Distribution?

An individual must instruct his or her IRA custodian/trustee to make the contribution directly to an eligible charity. The distribution must go directly from the IRA to the charity.

Does the Charity Need to Physically Receive the Check from the IRA by December 31 or is it Sufficient for the Check to be Sent by December 31?

To take advantage of the IRA Charitable Rollover, the distribution must be sent directly from the IRA to the charity. Generally, the date of mailing would qualify as the date the gift is made. Accordingly, if the IRA mails the distribution check (or wires the funds) to the charity by December 31, it would be counted as an IRA distribution for that particular year. *Distributions must be made by December 31 of a given tax year to qualify for that tax year. No extensions are permitted.*

Can an Individual Make a Qualified Charitable Distribution for Split Interest Gifts?

No. Charitable remainder trusts and charitable lead trusts are examples of giving vehicles that are not eligible to receive qualified charitable distributions. Furthermore, because individuals cannot receive a benefit in return for an IRA distribution, and contribution a donor makes in return for a charitable gift annuity would not be eligible for the tax-free treatment.

How Will Charitable Distributions Impact the Individual's Required Minimum

Distributions from the IRA?

An individual who attains age 70-1/2 is generally required to take required minimum distributions (“RMDs”) from his or her traditional IRA. For the purposes of RMDs, the IRS treats distributions from an IRA the same, whether individuals use the distribution for general purposes or directs the distribution to a charity. Therefore, *by using the IRA Charitable Rollover, the donor satisfies his or her RMDs for the given year.*

Definitions

Percentage of Income Limitation. In any given year, a donor may not deduct more than 50% of his or her adjusted gross income for gifts of cash to public charities (30% to private foundations). Although a taxpayer can carry forward amounts greater than 50% to the succeeding 5 years and deduct those amounts then, he or she will face an immediate tax bill. Moreover, these taxpayers may lose some of the benefit of the deduction if they die before the charitable gift has been fully deducted. A donor who consistently gives above the limit will not be able to take advantage of the carry-forward rules.

Itemized Deduction Reduction. Higher income taxpayers are required to reduce their itemized deductions by 3% of the amount by which their income exceeds a certain amount. This is known as the “Pease Limitation”. Taxpayers subject to the reduction can lose up to 80% of the value of their deductions because most itemized deductions must be reduced by 3% of the amount by which the taxpayer’s income exceeds a threshold amount (which is adjusted annually for inflation). For taxable years beginning in 2016, the applicable threshold is \$259,400 for single individuals, \$285,350 for heads of households and \$311,300 for married Individuals filing jointly. A large transfer from an IRA can increase a taxpayer’s income to the point where the 3% reduction applies.

Tax Drain. For larger estates, IRA accounts passed on to non-spousal beneficiaries may lose a substantial portion of their value to income and estate taxes. Thus, people may be encouraged to liquidate these accounts during their lifetimes or designate a charitable beneficiary upon death. The IRA Charitable Rollover gives people a way to make a difference during their lifetimes by transferring IRA funds to charity without triggering income taxes on withdrawal.

Private Foundation Conduit Rules. A private foundation may elect to meet the conduit rules and pay out 100% of the contributions the foundation received in its tax year by the 15th day of the 3rd month after the close of that tax year, in addition to meeting its 5% distribution requirements. A private foundation may elect to be or not to be a conduit private foundation from year to year. While a private non-operating foundation generally cannot receive a qualified charitable contribution from an IRA, a private non-operating foundation that elects to meet the conduit rules may receive such contributions.