



## Congress makes charitable IRA giving permanent

Congress has passed the Protecting Americans from Tax Hikes Act of 2015 that makes permanent the provision that allow individuals at least 70½ to request their IRA administrators make distributions directly to their favorite charities.

The principal rules for direct transfers from a traditional IRA to a qualified public charity are that the IRA owner must be 70½ or older and that the transfer is for no more than \$100,000 each year. The transfer does qualify for the required minimum distribution. It must be to a public charity either outright or for a specific purpose, but may not be to a donor advised fund or supporting organization. The transfer is made directly from a trustee to the charitable organization.

No gifts to life-income planned gifts or donor-advised funds are permitted.

Ruth Weaver, the Christian Church Foundation's senior vice president, said the only way IRA gifts can be used for donor-directed permanent funds at the Foundation is for the donor to relinquish the ability to amend gift agreement documents.

While planned gifts, such as charitable gift annuities, charitable remainder trusts and the Foundation's Steward's Donor-Advised Funds are excluded, Weaver said congregations could benefit from the IRA charitable giving provision, especially in cases where a donor would like to make a gift to a capital campaign.

### **Who Can Exclude IRA Distributions?**

The exclusion applies to individuals who have reached age 70½ by the date of contribution. It is important to distinguish this rule from the rule that requires plan participants to begin receiving minimum required distributions in the same year they attain age 70½. Therefore, donors, their advisors, and helpful charities will want to check the calendar to make sure this important test is satisfied.

### **Limitation on Amount**

The amount that can be excluded from a plan owner's income is limited to \$100,000 per taxpayer per year. Therefore, a married couple could donate up to \$200,000 provided each spouse owns at least one IRA and can each make a qualified charitable distribution of \$100,000 from their plans. Amounts exceeding this amount are treated under the old rules.

## **Can qualified charitable distributions be applied in satisfaction of a plan owner's minimum required distribution requirements for the year?**

Yes. If, for example, a participant is required to withdraw 5% from their IRA for the year, the entire amount can be directed to charity in satisfaction of their minimum required distribution.

## **What about income tax withholdings from amounts distributed to charity?**

The Treasury will prescribe rules under which IRA owners are deemed to elect out of withholdings on amounts distributed to charity.

## **Who Benefits from the IRA Charitable Giving Rules?**

### **Non-Itemizers**

First and foremost, because qualified charitable distributions from IRAs will eliminate the need for donors to claim an income tax charitable deduction, non-itemizers will enjoy the equivalent of a charitable deduction. In fact, some donors who were itemizing for the sole purpose of claiming deductions for their charitable gifts may no longer need to do so if they fund their gifts from their IRAs.

The new rules may also be attractive to residents of states with no state income tax (such as Florida, Texas, Nevada, and Washington) because relatively fewer taxpayers in those states itemize (because they have no state income tax to deduct against their federal tax).

### **Donors Whose Charitable Deductions Are Maxed Out**

At the opposite end of the financial spectrum may be donors who have maximized their ability to claim income tax deductions due to the 50% of AGI percentage limitation. These donors will find they can give more because QCDs operate independently of the percentage limitation rules and, therefore, don't affect other gifts to which the limitations apply.

### **Donors Subject to Tax Friction**

Under the old rules, donors making gifts from their IRAs would have to take the distribution into their taxable income and then claim an offsetting income tax charitable deduction. However, the result is not always a wash.

For higher income earners, the impact of receiving additional income on the taxability of social security payments, the deductibility of medical expenses, miscellaneous itemized deductions (subject to the two percent of AGI limitation), the phase-out of itemized deductions and child tax credit, and application of the alternative minimum tax can often result in a net income tax cost of making a charitable gift.

Qualified charitable distributions from IRAs can eliminate this friction and need to perform trial income tax calculations to analyze their net income tax effect (caveat, see discussion of state income issues below).

### **Donors in States that Don't Allow Charitable Deductions**

Some states do not allow itemized deductions for state income tax purposes. In addition, some states (which include some of the same states that don't allow itemized deductions) do not tax retirement plan distributions or otherwise cap the amount of retirement plan distributions subject to state income tax. It is beyond the scope of this article to analyze the benefit of QCDs on a state by state basis; however, we can make some general observations.

In states that do not allow itemized deductions, plan owners who made taxable withdrawals from their IRAs and then donated them under the old rules had to pay state income tax for the privilege of making a charitable gift. Because states generally follow federal income inclusion rules, QCDs should be excluded for state income tax purposes under the new law. Accordingly, taxpayers residing in these states will benefit, if their state continues to follow the federal rules. To the extent states exclude all or cap the amount of plan distributions that are taxable, the relative benefit of the new rules may be reduced.

For example, the new rules may be particularly attractive to taxpayers residing in Indiana, Massachusetts, and Ohio because those states tax retirement distributions and do not allow itemized deductions. At the other end of the spectrum, Illinois taxpayers will see no change at the state income tax level because itemized deductions are not allowed and retirement plan distributions excluded. Residents of New Jersey and Michigan (which cap the amount of retirement distributions subject to state income tax) may enjoy a partial benefit. Again, this is not an exhaustive list of all states affected. As has always been our mantra here at the PGDC, check state law and run the numbers!

### **Charities**

Last but not least, because the new rules make the equivalent of a charitable deduction available for non-itemizers and otherwise remove much of tax friction associated with making gifts from IRAs, charities should be able to benefit from a new asset pool and new group of donors. However, as with the temporary charitable giving incentives contained within the Katrina Relief Act, the charities that will benefit will be those that clearly communicate the new rules and opportunity to their donors, and are prepared to help them through the process.

## Sample Documents

### Sample Request from Plan Owner to Administrator for Charitable Distribution from Individual Retirement Account

RE: Request for Charitable Distribution from Individual Retirement Account

Dear IRA Custodian,

The Protecting Americans from Tax Hikes Act of 2015 permits a rollover directly from an IRA to a qualified public charity. As the owner of IRA account # \_\_\_\_\_ that is in the custody of your organization, I request that you transfer from that account the sum of \$ \_\_\_\_\_ to my favorite charity \_\_\_\_\_ located in city \_\_\_\_\_ with state and zip code \_\_\_\_\_. The Treasury Tax ID Number for my favorite public charity is \_\_\_\_\_.

It is my intention to make a Qualified Charitable Distribution (QCD) to this charity from my IRA, which may fulfill part or all of my IRA required minimum distribution for this year.

This letter is sufficient authorization for you to make this QCD gift. However, if you require any further documents, please promptly e-mail those to me.

In your transmittal to the charity, please memorialize my name and address as the donor of record in connection with this transfer. Please copy me on your transmittal.

If you have any questions or need to contact me, I can be reached at (telephone).

Thank you for your assistance in this matter.

Sincerely,

(Plan Owner)

### Sample Letter from Donor Informing Charity of Forthcoming Qualified Charitable Distribution from Administrator

Dear Sir or Madam:

It is my pleasure to inform you that I have requested a qualified charitable distribution from my Individual Retirement Account payable to your organization in the amount of \$ \_\_\_\_\_ from my plan trustee/administrator, ( name of trustee/administrator).

It is my intent to comply with the requirements of the Protecting Americans from Tax Hikes Act of 2015 and Sec. 408(d)(8) of the Internal Revenue Code of 1986, as amended, in connection with this gift.

Accordingly, upon your receipt of payment from my trustee/administrator, please send me a contemporaneous written acknowledgement that states the amount of my gift, that no goods or services were transferred to me by your organization in consideration for this gift, and that my gift will not be placed in a donor advised fund or supporting organization.

If you have any questions or need to contact me, I can be reached at (telephone).

Sincerely,

(Donor)

### **Sample Contemporaneous Written Acknowledgement from Charity to Donor**

Dear (Donor):

Thank you for your gift in the amount of \$\_\_\_\_\_ from your Individual Retirement Account. We are writing to acknowledge that we received your gift directly from your plan trustee/administrator and that it is your intention for all or a portion of your gift to qualify as a qualified charitable distribution from your IRA under section 408(d)(8) of the Internal Revenue Code.

In that connection, we warrant to you that our organization is qualified under section 170(b)(1)(A) of the Internal Revenue Code and that your gift was not transferred to either a donor advised fund or a supporting organization as described in section 509(a)(3).

We further warrant that no goods or services of any value were or will be transferred to you in connection with this gift.

Please retain this letter with your important tax documents and provide a copy to your tax preparer.

Thank you for your generous contribution to our organization.

Sincerely,

(Charity)

*Please remember: The Christian Church Foundation does not render legal, tax or other professional advisory services. Advice from an attorney and other professional advisors should be sought when considering charitable giving.*