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# ira required minimum distributions made in 2010 cannot be rolled over or reclassified to qualify as charitable distributions

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**practice areas**

nonprofit organizations

From 2006 to 2009, individuals aged 70-1/2 or older could annually distribute up to \$100,000 tax-free from their IRA to charity, without including the distribution in gross income and taking a corresponding charitable deduction (subject to applicable limitations). To qualify, the distribution had to be made directly by the IRA trustee to a public charity (not a supporting organization or donor-advised fund), and the entire distribution must have been deductible under the normal charitable contribution rules (*i.e.*, no quid pro quo that is more than *de minimis*). This distribution to charity would also satisfy the taxpayer's required minimum distribution for a given year.

The IRA charitable rollover provisions expired at the end of 2009. Many experts and advisors predicted that these provisions would be extended sometime during 2010, and many potential donors waited to take their required minimum distributions. However, as the months of 2010 passed and proposals came and went, it seemed increasingly unlikely that Congress would extend the IRA charitable distribution provisions. A large number of IRA account holders, initially hoping to cause their required minimum distributions to be distributed to charity, stopped waiting and took their required minimum distributions.

On December 16, 2010, Congress passed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Act"). The 2010 Act extends the exclusion from gross income for qualified charitable IRA distributions made prior to 2012, and also generally permits taxpayers to elect to have distributions made in January 2011 treated as having been made on December 31, 2010, for certain purposes. This allows a charitable distribution made in January 2011 to count against the 2010 \$100,000 limitation and be used to satisfy the taxpayer's 2010 IRA minimum distribution requirement.

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However, the 2010 Act is silent as to those IRA account holders who already took their required minimum distributions for 2010. Some commentators have suggested strategies to "return" 2010 required minimum distributions, under the general rule that allows a rollover of an IRA distribution with 60 days, to be followed by a distribution from the IRA directly to charity. Another proposed strategy was to make a distribution to charity in January 2011 that would count for the 2010 year for required minimum distribution purposes. The IRA account manager would then allow the IRA account holder to roll the initial 2010 distribution back into the IRA, so long as the rollover was made within 60 days of the initial distribution. These practices were intended to create relief for those IRA account holders who took their required minimum distributions in November or December of 2010, but left those who had taken required minimum distributions earlier in 2010 out in the cold.

Unfortunately for many taxpayers, on January 5, 2011, the IRS made it clear that such rollovers and reclassifications simply do not work. IRS spokesperson Eric Smith stated unequivocally that **"[r]equired minimum distributions from an IRA received by a taxpayer cannot be rolled over to an IRA."** Mr. Smith elaborated, stating that, "[a]s noted on page 24 of the 2009 IRS Publication 590, Individual Retirement Arrangements, 'Amounts that must be distributed during a particular year under the required distribution rules are not eligible for rollover treatment.' Moreover, there's no provision in the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, nor any hint in the Committee report for such [required minimum distribution] recontribution. " This is disappointing but not surprising, since the exception to the 60-day rule for required minimum distributions is codified in section 408(d)(3)(E) of the Internal Revenue Code. See also <http://www.irs.gov/taxtopics/tc413.html> (IRS Topic 413, stating that a required minimum distribution cannot be rolled over). Mr. Smith's statement makes clear that, if an individual took a required minimum distribution in 2010, that required minimum distribution cannot be returned or reclassified in order to distribute the required minimum distribution to charity.

If you have any questions about this Alert, please contact the author or any member of the MSK Charitable Sector Department.