



were these the extenders that we were waiting for?

MSK Client Alert

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The Senate on December 16 passed a tax bill that retroactively extends a package of fifty-five tax provisions through the end of 2014. In other words, by the time President Obama signs the new law, it will remain in effect for less than two weeks.

Included in the extenders are important tax provisions affecting charitable giving, including the charitable IRA rollover, enhanced benefits for conservation easements and contributions of food inventory. While it is great that these tax incentives have been extended, the actual impact on charitable giving is questionable since these provisions expired December 31, 2013 and many planners have been reluctant to recommend charitable giving strategies to their clients when it was uncertain whether the expired provisions would be re-enacted in their prior form, altered in some way, or simply allowed to expire. The one exception may be for qualified contributions of IRA assets, since some IRA owners and their advisors may have been waiting until the eleventh hour to make required minimum distributions – either to the IRA participant or directly to charity.

The potential benefit for donors of the IRA provision are clear:

1. Background:

In years 2006 - 2013, individuals age 70-1/2 or older could distribute up to \$100,000 tax-free annually from their IRA to charity, without taking a charitable deduction or including the distribution in gross income. To qualify, the distribution must be made directly by the IRA trustee to a public charity (not a supporting organization or donor-advised fund), and the entire distribution must be deductible under the normal rules (i.e., *no quid pro quo* that is more than *de minimus*) (IRC § 408(d)(8)).

1. Example:

attorneys

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practice areas

nonprofit organizations



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John has AGI from other sources of \$50,000 in the year in which he instructs his IRA trustee to distribute \$100,000 directly to the university.

1. **Result without extenders:**

The transfer from the IRA to charity would be treated as a distribution to John, followed by his contribution to the university. The deemed distribution would increase his AGI from \$50,000 to \$150,000. The contribution would be allowed as a deduction up to 50% of AGI, or \$75,000, leaving him with additional AGI subject to tax resulting from the IRA distribution to the university of \$25,000, even though the entire distribution went to charity.

1. **Result with extenders:**

Under the special charitable IRA rollover provision, the distribution from the IRA trustee to the university would not increase John's AGI (nor would it entitle him to a charitable contribution deduction), with the result that he makes a gift in the same amount, but ends the year with AGI of \$50,000.

John may have been optimistic that Congress would eventually get its act together and pass the extenders legislation, since it has every year in the past, and arranged for his IRA trustee to make the distribution to his *alma mater* months ago. Or he may have waited until the last minute to see if the legislation would pass before either taking his minimum required distribution himself or directing it to the university. Either way, the charitable distribution will now qualify and will not be included in John's income.

This belated extension is nevertheless good news for both donors like John and the charities they support, since the IRA rollover has proven to be a popular fundraising vehicle due to the vast amount of assets held in IRAs, and the fact that holders of those accounts are required to take distributions that they may not necessarily need to spend themselves but would rather have go to charity. It would, of course, be even more beneficial to the charitable sector if the IRA rollover were to be made a permanent part of the Internal Revenue Code, rather than extended every year or two, since it would make it easier for donors to plan their giving (and for advisors to advise them), which explains the effort by the charitable sector we have seen this year encouraging Congress to make the charitable extenders – especially the IRA rollover – permanent.