



congress extends charitable ira rollover: additional useful information

MSK Client Alert

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Under a tax law provision enacted as part of the Pension Protection Act of 2006 (PPA), an IRA participant was permitted to transfer \$100,000 per year to a charity directly from the IRA without having the distribution included in income and without having the amount transferred to the charity count toward the individual's limit on charitable contributions, provided the individual had attained age 70-1/2. Although, as originally enacted, this provision applied only in 2006 and 2007, under the recently enacted Emergency Economic Stabilization, Energy Improvement and Extension, and Tax Extenders and AMT Relief Acts of 2008, this provision has been extended so that it applies to transfers made until December 31, 2009.

Until the enactment of the PPA, charitable gifts from retirement plans were treated as distributions to the participant followed by contributions of the same amount to charity. This generally resulted in taxable income (and possibly excise taxes) attributable to the receipt of the plan distribution followed by a deduction for a charitable contribution which in certain cases did not fully offset the income from the plan distribution.

Among the reasons that a deduction for charitable contributions may not have fully offset the income from a plan distribution was the following:

- If the recipient was under age 59-1/2 or otherwise ineligible for any of the exceptions to the early distribution penalty tax, the distribution was subject to a ten-percent federal penalty tax for early distributions that was not offset by the charitable contribution.
- If the individual's charitable contributions exceeded the limitation that the amount deductible for charitable contributions cannot exceed 50 percent of the donor's contribution base, then the charitable contribution deduction was not fully available in the year of contribution, although a carryover of the amount that was not deductible could be deducted in future years.

attorneys

Robert J. Lowe

practice areas

nonprofit organizations

msk.com

los angeles
t 310.312.2000
f 310.312.3100

new york
t 212.509.3900
f 212.509.7239

washington, dc
t 202.355.7900
f 202.355.7899



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- If the donor was subject to the phase-out of itemized deductions for certain higher income taxpayers, the charitable deduction would not fully offset the income from the plan distribution.

By contrast under the PPA provision, the amount transferred is not subject to these limitations. In addition, even though the participant does not actually receive the distribution, it is counted toward satisfying the participant's requirements under the minimum distribution rules applicable to IRAs. Thus, a participant can satisfy the minimum distribution rule (assuming the minimum distribution is no more than \$100,000) without incurring any taxable income by directing payment of the minimum distribution to a qualified charity.

There are many technical rules applicable to these transfers. If they are not all satisfied, then the distribution is treated as a payment to the IRA participant followed by a contribution to the charity.

If the individual has several IRAs, the \$100,000 limit applies to all of the individual's IRAs in the aggregate. If a husband and wife each satisfy the requirements of the statute, each may transfer \$100,000 per year to qualified charities. If the IRA is maintained for the benefit of a beneficiary after the death of the IRA holder, then the beneficiary must have attained age 70-1/2 to be able to use this provision.

The transfer could be accomplished from either a traditional IRA or a Roth IRA. However, to the extent that distributions from the Roth IRA would be otherwise excludable from income, there may not be any benefit to using a Roth IRA for this purpose. The IRA cannot be part of a "simplified employee pension" or a "Simple IRA" as those terms are defined in the Internal Revenue Code. If the IRA includes amounts attributable to both deductible and nondeductible contributions, the amount paid to the charity is treated as first coming from the portion attributable to deductible contributions.

The contribution must be to a public charity, other than a donor advised fund or supporting organization, and not a private foundation. The transfer of funds must go directly from the IRA to the charity without an intervening distribution to the participant. However, a check from the IRA made payable to the charity may be delivered to the IRA holder for transmittal to the charity. The transfer must satisfy rules for charitable contributions generally including substantiation requirements and that the donor not receive any economic benefit in return.

The amounts distributed under this provision are not subject to income tax withholding even if the IRA participant has elected withholding with respect to other distributions. If the IRA participant has an outstanding pledge to a qualified charity, the transfer may be used to satisfy the pledge without violating the prohibited transaction rules applicable to IRAs.