

ANALYSIS OF IRA CHARITABLE ROLLOVER EXTENSION

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The Pension Protection Act of 2006 (PPA) permitted individuals to roll over up to \$100,000 from an individual retirement account (IRA) directly to a qualifying charity without recognizing the assets 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 the President signed the PATH Act making this special provision permanent.

What is an IRA charitable rollover?

The law uses the term “qualified charitable distribution” to describe an IRA charitable rollover. A qualified charitable distribution is money that individuals who are 70½ or older may direct from their traditional IRA to eligible charitable organizations. The provision has a cap of \$100,000 for charitable distributions from individual IRAs each year. Individuals may exclude the amount distributed directly to an eligible charity from their gross income.

What is the new expiration date of this provision?

This provision is now permanent.

Does a donor also receive a charitable deduction when they roll over assets to a charity under this provision?

No. Under this provision, donors benefit by not having to recognize the amount contributed directly from their IRA to a qualifying charity. However, because donors exclude this contribution from their gross income, they cannot take a charitable contribution deduction for the contribution; to do so would result in a double benefit for donors and that is explicitly prohibited.

To which charities may donors make qualified charitable distributions?

Most contributions to public charities—other than supporting organizations—are considered qualified charitable contributions. However, distributions from IRA accounts to donor advised funds held by public charities are not considered qualified charitable distributions under this charitable rollover provision. (See [What is a donor advised fund?](#) on the Council's website.)

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 (see Definitions, below). Neither private non-operating foundations nor split interest trusts (such as charitable remainder trusts) are eligible for special treatment as qualified charitable distributions under the law.

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—such as scholarship, field-of-interest, and designated funds—qualify. The exception to this general statement is that a distribution to a donor advised fund will not qualify for this special treatment.

Is a donor limited to one IRA charitable distribution per year, or can a donor request multiple transfers?

Donors aged 70 ½ or older are limited to a maximum of \$100,000 in any one year as an IRA charitable distribution, however there is no requirement that the entire amount be made in one transfer or that the entire amount go to a single qualified charitable organization. Donors can request multiple direct transfers from their IRA to qualified charities in a year, but only \$100,000 will be excluded from income as an IRA qualified charitable distribution.

What if donors want to contribute more than \$100,000 to a qualified charity from an IRA?

The law limits the amount that donors are able to exclude from their income to \$100,000. If donors wish to take funds from their IRA to contribute more than \$100,000 to charity, they cannot exclude the additional amount from their gross income. Rather, they must follow the general rules pertaining to percentage limitations and itemized contribution reductions. (Both are discussed below.)

Can donors contribute IRA assets to a donor advised fund?

Yes. However, since such distributions do not count as qualified distributions from IRAs under these special rules, donors will have to first recognize those distributions as income. They then must calculate their charitable deduction according to the general rules pertaining to percentage limitations and itemized contribution reductions discussed below.

Under what circumstances will this special treatment of an IRA charitable rollover most likely benefit donors?

Generally, this new provision benefits donors who itemize deductions and whose charitable contributions are reduced by the percentage of income limitation. Traditionally, when individuals receive a distribution from their IRA and make a corresponding charitable contribution, they must count the distribution as income and then receive a charitable deduction for any amounts they transferred to charity. For higher income taxpayers (see Definitions, below), the charitable contribution deduction they receive may not totally offset the taxes they must pay for receiving the distribution from their IRA. In such cases, donors would potentially benefit more by using the charitable rollover provision when making a charitable donation.

Other donors who may benefit: individuals who do not usually itemize their deductions and individuals in states where the operation of state income tax law would offer greater benefits as a result of a charitable rollover. Donors will need to work with their professional advisers to determine the effect of these rules on their specific tax situation.

This provision will also likely benefit donors whose charitable contributions are reduced by the itemized deduction reduction. (See Definitions, below.)

How do individuals make a qualified charitable distribution?

Individuals must instruct their IRA trustee to make the contribution directly to an eligible charitable organization.

A donor wants to utilize the IRA charitable distribution for his/her 2015 required minimum distribution. Does the community foundation need to physically receive the check by December 31, 2015 or is it sufficient for the check to be put in the mail?

To take advantage of the IRA charitable distribution, the distribution must be sent directly from the IRA company to the charity. [IRS Publication 526](#) discussed the rules for delivery of charitable contributions and explains that generally, the date of mailing would qualify as the date the gift is made. Accordingly, if the IRA company mails the distribution check to the charity by December 31st, it would be counted as an IRA distribution in 2015.

Should a charity receiving a contribution directly from an IRA provide a gift acknowledgement?

Yes. Individuals making a charitable contribution using IRA funds must obtain a contemporaneous written acknowledgement of the contribution to benefit from this new provision. [IRS Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements](#) contains information about substantiation of charitable contributions.

May a charity provide any goods or services in return for the contribution?

No. If donors receive any goods or services (e.g., tickets to a fundraiser) that would have reduced their charitable deduction had they made an outright gift to the charity, the rollover of assets from an IRA will not qualify for the tax-free treatment under this provision. Gifts to the donor that are disregarded (i.e., public recognition, token gifts, and insubstantial benefits) will not disqualify the contribution from the tax-free treatment. [IRS Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements](#) contains information about disregarded benefits.

Can individuals make a qualified charitable distribution for split interest gifts?

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

How will charitable distributions impact the minimum required distributions from a taxpayer's IRA?

Shortly after individuals reach the age of 70½, they are generally required to receive distributions from their traditional IRA. For the purposes of minimum required distributions, the IRS treats distributions from an IRA the same, whether individuals use the distribution for personal purposes or direct the distribution to a charity.

DEFINITIONS

Percentage of Income Limitation

In any given year, donors may not deduct more than 50 percent of their income for gifts of cash to public charities (30 percent, if giving to private foundations). Although taxpayers can carry forward amounts greater than 50 percent and deduct those amounts in future years, they will face an immediate tax bill. These taxpayers also may lose some of the benefit of the deduction if they die before the gift has been fully deducted. Donors who consistently give above the limit will not be able to take advantage of the carry-forward provisions.

Itemized Deduction Reduction

Higher income taxpayers will be required to reduce their itemized deductions by 3 percent of the amount by which their income exceeds a certain amount. This reduction of itemized deductions is often referred to as the Pease Limitation.

Taxpayers subject to the reduction can lose up to 80 percent of the value of their deductions because most itemized deductions must be reduced by 3 percent of the amount by which the taxpayer's income exceeds a certain amount [which is adjusted annually for inflation]. For 2015, the threshold is \$258,250 for individuals, \$284,050 for heads of households, and \$305,500 for married couples filing jointly. A large transfer from an IRA can increase a taxpayer's income to the point where this 3 percent reduction applies.

Example: In 2015, a married couple filing jointly has \$500,000 in adjusted gross income (AGI). Because the couple's AGI exceeded the \$305,500 threshold, the 3 percent reduction will apply to the couple's itemized deductions.

AGI \$500,000

Excess of couple's AGI over \$305,500 = \$194,500

3% reduction x 3%

Reduction of itemized deductions \$5,835.00

The couple's itemized deductions will be reduced by the lesser of \$5,835 or 80% of the itemized deductions.

- For larger estates, IRA accounts passed on to heirs (non-spousal beneficiaries) may lose a substantial portion of their value to estate and income taxes. Therefore, people may be encouraged to liquidate these accounts during their lifetimes or designate a charitable beneficiary upon death. The law gives people a way to make a difference during their lifetimes by transferring IRA funds to charity without triggering taxes on the withdrawal.
- **Example:** An individual has accumulated approximately \$1,000,000 in retirement assets; she has other sources of wealth for most living expenses. This individual planned to leave a portion of her estate to charity. She can now choose to transfer up to \$100,000 of IRA assets to charity annually. Unlike other lifetime withdrawals, this transfer is not subject to tax. The donor can establish a special named fund at the community foundation (other than a donor advised fund), and the gift can start addressing causes important to her.

Private Foundation Conduit Rules

A private foundation may elect to meet the conduit rules and pay out 100 percent of the contributions the foundation received in its tax year by the 15th day of the third month after the close of that tax year, in addition to meeting its regular 5 percent 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.

RETROACTIVITY EXPLAINED

Who can take advantage of the retroactivity to January 1, 2015?

The law is retroactive to January 1, 2015, but the retroactivity only applies for donors who directed an IRA distribution directly to charity in 2015 or who meet the special rules for December distributions described below. Some professional advisers advocated in 2015 for individuals to direct IRA distributions directly to charity in hopes that the IRA charitable rollover would be extended again. The professional advisers made this recommendation because there was relatively little downside if the

donor's inclination was to make the charitable gift regardless of whether it received the favorable treatment of the IRA charitable rollover. The rationale was that if an individual made the IRA distribution directly to an eligible charity and the IRA rollover was enacted retroactively later in the year, the individual could treat it as an IRA charitable rollover. The rationale continued that if the IRA charitable rollover was not enacted retroactively, the individual would just treat the IRA distribution as income and take a corresponding charitable deduction.

Who is eligible to treat IRA distributions made January 1–December 31, 2015, as an IRA charitable rollover?

Individuals whose IRA distributions were made directly to an eligible charity may treat the distribution as a 2015 IRA charitable rollover. All of the regular restrictions applicable to IRA charitable rollovers regarding age and limits still apply. Individuals who personally received the distribution from their IRA rather than directing the distribution to an eligible charity may **not** treat the distribution as a 2015 IRA charitable rollover.

Who is eligible to treat IRA distributions made December 1– December 31, 2015, as an IRA charitable rollover?

Individuals whose IRA distributions were made directly to an eligible charity (and met all other requirements) may treat the distribution as a 2015 IRA charitable rollover. In addition, individuals who personally received an IRA distribution in December 2015 may treat that distribution (or a portion thereof) as a 2015 IRA charitable rollover **if** the individual transfers the amount in cash to an eligible charity by December 31, 2015. The Treasury Department and IRS may issue guidance regarding the details of such transfers. If such guidance is issued, we will update you.

Did the IRA Charitable Rollover passed in 2015 include an extension date into January 2016?

No. In 2012, the IRA Charitable Rollover extension was passed to include an extension date. It stated that distributions made from January 1, 2012 - January 31, 2013 would be recognized for the 2012 tax year. The December 18, 2015 PATH Act did not include this language. Therefore distributions must be made by December 31 of a given tax year to be included in that tax year.

DISCLAIMER

This information is based on our continuing analysis of the relevant legislation and regulations. We make every effort to ensure accuracy of this document. The information is not a substitute for expert legal, tax, or other professional advice, and we strongly encourage grantmakers and donors to work with counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Revised December 22, 2015.