

New Opportunities for IRA-Related Charitable Giving



Mark J. Soss, Esq.
Practices law in Lakewood
Ranch, Florida

For most eligible taxpayers, in 2009, more income tax benefits will be derived by making a charitable contribution directly from his or her retirement account than by receiving the RMD directly and making a corresponding charitable donation.

Every retired taxpayer, aged over 70 and six months (eligible taxpayer), is required to withdraw an amount equal to his or her annual Required Minimum Distribution (RMD) from their Individual Retirement Account (IRA, Roth IRAs and SEP-IRA). The RMD must be withdrawn on or before December 31st each year. In August 2006, the Pension Protection Act of 2006 (PPA), amended Section 408(d)(8)(A) of the Internal Revenue Code (IRC) permitting eligible taxpayers to make a direct transfer of up to \$100,000 from their retirement account to a charity without including the distribution as taxable income. The PPA provision expired on December 31, 2007.

The Emergency Economic Stabilization Act of 2008 (EESA), signed into law on October 3, 2008, extended the charitable giving options contained in the PPA through December 31, 2009. Subsequently, 2009 tax planning opportunities were further expanded by enactment of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). Signed by President Obama on Dec. 23, 2008, WRERA suspends the minimum required distributions in 2009 for eligible taxpayers (otherwise a 50% tax would apply to the amount not withdrawn).

Tax Benefits:

IRA Rollover Qualifies for RMD

Despite the fact that RMD is calculated on January 1st of each taxable year, a large number of IRA owners receive their RMD at the end of the fiscal year. This allows the IRA assets to continue growing (in most years) tax-free before they are required to be withdrawn (on or before December 31st).

Under EESA, instead of receiving the RMD and including the funds into taxable income, a taxpayer may contribute (through a charitable rollover) his or her RMD to a charitable organization. The charitable rollover will be limited to \$100,000 per taxpayer (a husband and wife may contribute \$100,000 each from two separate IRA accounts). While the charitable rollover will not be eligible for a corresponding charitable deduction, the taxpayer must still establish

that the contribution was a "qualified charitable distribution" under IRC Sec. 408(d)(8)(B).

State Tax Impact

States fall into several different categories with respect to the charitable IRA rollover. States either: (i) do not provide for charitable income tax deductions; (ii) permit charitable deductions, but use the federal adjusted gross income as an initial reference number for determining state tax; or (iii) do not recognize the IRA charitable rollover and require IRA reporting for state income tax purposes. Under each scenario, a taxpayer will benefit from the IRA rollover by reducing their state taxable income and reducing their state taxes.

Income Tax Benefits

An eligible taxpayer who receives a distribution from his or her IRA must include the funds as part of their gross income. A corresponding charitable contribution will provide a charitable deduction for the amount transferred to charity. However, an eligible taxpayer in one of the highest income brackets may not be able to totally offset the tax associated with the RMD received with a corresponding charitable contribution. Eligible taxpayers can deduct (i) cash contributions, in full, up to 50% of their adjusted gross income; (ii) property contributions, in full, up to 30% of their adjusted gross income; and (iii) contributions of appreciated capital gains assets, in full, up to 20% of their adjusted gross income. Charitable contributions in excess of the limits can be carried over for a maximum of five years.

Utilization of a charitable rollover allows a taxpayer to avoid (i) inclusion of the RMD in their Adjusted Gross Income (AGI); (ii) the payment of federal and/or state income tax on the RMD; (iii) the phase out of income tax exemptions resulting from higher AGI levels, (iv) increased social security taxation (avoidance of the 50% or 85% level of taxation); and (v) the higher capital gains tax rate (15%). It also benefits eligible taxpayers' who utilize the standard deduction (the charitable deduction is an itemized deduction) and would otherwise be

HIGGINS, CAVANAGH & COONEY, LLP

Is pleased to announce the formation of a medicare compliance practice group to assist insurers, self insureds, third party administrators, plaintiff attorneys and defense attorneys in providing:

- Medicare Set Aside Preparation and Submission
- Settlement Document Preparation
- Future Medical Cost Projections
- Medicare Beneficiary Status Determination
- Analysis and Guidance Regarding Conditional Payment Liens

For more information please contact:

Gerald C. DeMaria, Esq.

Christine D'Orsi Fitta, Esq.

Higgins, Cavanagh & Cooney, LLP

123 Dyer Street

Providence, RI 02903

401-272-3500

800-274-5299

www.hcc-law.com

Rhode Island does not have a procedure for the certification of specialists.

unable to benefit from the charitable deduction on their income tax return.

Eligible Charitable Organizations

Both the PPA and EESA require the charitable rollover is made to an IRC Sec.509(a)(1) or IRC Sec.170(b)(1)(A) charity (collectively a "Charitable Organization"). Eligible entities include a (i) community foundation; (ii) private foundation (which meets the conduit rules); (iii) college or university scholarship fund; or (iv) relief organization. The charitable rollover may also be utilized to satisfy a charitable pledge (IRS Notice 2007-7). In contrast, a charitable rollover may not be made to (i) an IRC Sec. 509(a)(3) supporting organization; (ii) IRC Sec. 4966(d)(2) donor-advised fund; (iii) private foundations (which do not meet the conduit rules); (iv) split interest trusts (charitable lead and remainder trusts); or (v) pooled income fund.

Limitations and Restrictions

Charitable donations from 403(b) plans, 401(k) plans, pension plans, and other retirement plans are ineligible for the tax-free treatment. Distributions must be made directly from the IRA trustee payable to the Charitable Organization. The recipient organization should issue an acknowledgment for the IRA rollover. The acknowledgement should include (i) the date of the gift; (ii) the name of the IRA custodian; (iii) the amount of the gift; (iv) that the gift is a qualified charitable distribution under IRC Sec. 408(d)(8)(A); and (v) state that no goods or services were provided in exchange for the gift.

Conclusion

For most eligible taxpayers, in 2009, more income tax benefits will be derived by making a charitable contribution directly from his or her retirement account than by receiving the RMD directly and making a corresponding charitable donation. The tax benefits include avoidance of: (i) the payment of federal and/or state income tax on the RMD; (ii) the phase out of income tax exemptions resulting from higher AGI levels, (iii) increased social security taxation (avoidance of the 50% or 85% level of taxation); and (iv) the higher capital gains tax rate (15%). ♦

**Your
One
Call**

PELLCORP INVESTIGATIVE GROUP, LLC

Private Investigations

Edward F. Pelletier III, CEO

(401) 965-9745

www.pellcorpinvestigativegroup.com