

IRA Charitable Rollover

(Revised October 3, 2008)

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. **On October 3, 2008, President Bush signed a bill (H.R. 1424) into law which will extend the IRA charitable rollover provision through December 31, 2009. Note that the new law only changes the termination date of the provision. No changes were made to the substance of the rules for qualified charitable contributions from IRAs. Below are some frequently asked questions about the charitable rollover which were developed after the passage of the PPA.**

What is an IRA charitable rollover?

The PPA uses the term “qualified charitable distribution” to describe an IRA charitable rollover. A qualified charitable distribution is a distribution to an eligible charitable organization from a traditional IRA of an individual who is 70 ½ or older. An individual may exclude up to \$100,000 from his/her gross income for each tax year for qualified charitable distributions from IRAs.

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

No. The benefit under this provision is that the individual does not recognize the amount contributed directly from the IRA to a qualifying charity. Because a donor does not include the amount in his/her gross income, the individual may not take a charitable contribution deduction for the contribution. To do so would allow a donor to receive a double benefit from the contribution so a charitable contribution deduction 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 to donor-advised funds held by public charities are not qualified charitable distributions (see [What is a donor-advised fund?](#) on the Council’s website).

A qualified charitable distribution may also be made 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), Private non-operating foundations and split interest trusts are not eligible for special treatment as qualified charitable distributions under the new law.

Will an IRA distribution to a scholarship fund 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.

What if a donor contributes more than \$100,000 to a qualified charity from an IRA?

Since the amount that the donor is able to exclude from income is limited to \$100,000 under the PPA, the remaining amount would be recognized as income. The donor may still contribute the additional amount to charity; however, the extent to which that additional amount can be deducted from the individual's income will be determined following general rules about percentage limitations and the itemized contribution reduction discussed below.

Can a donor contribute IRA assets to a donor-advised fund?

Yes. However, since such distributions do not count as qualified distributions under these special rules, the donor will have to first recognize those distributions as income. The donor's charitable deduction must then be calculated taking into account general principles relating to percentage limitations and the itemized contribution reduction discussed below.

Under what circumstances will this special treatment of IRA charitable rollover most likely benefit a donor?

Generally, donors who itemize deductions and whose charitable contributions will be reduced by the percentage of income limitation or by the itemized deduction reduction (see [Definitions](#), below), will benefit from a making a qualified charitable distribution. Traditionally, an individual who receives a distribution from an IRA and makes a corresponding charitable contribution must count the distribution as income but will receive a charitable deduction for any amounts transferred to charity. However, because of the application of the percentage limitations on charitable contributions and the reduction of itemized deductions for higher income taxpayers (see [Definitions](#), below), the charitable contribution deduction may not totally offset the taxes resulting from the distribution from the IRA. For that reason, the new provision for qualified charitable distribution would allow a qualified charitable distribution from an IRA to be entirely excluded from an individual's income. Since the rollover gift is excluded from income, neither the percentage limitations nor the itemized deduction reduction rules apply and the donor achieves a tax benefit.

Other donors who may benefit from using a qualified charitable distribution are donors that do not itemize their deductions. Also, donors in some states may recognize greater benefits of a charitable rollover due to state income tax law. Donors will need to work with their professional advisors to determine the effect of these new rules on their specific tax situation.

How does an individual make a qualified charitable distribution?

An individual will direct his/her IRA trustee to make the contribution directly.

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

Yes. An individual must obtain a contemporaneous written acknowledgement of the contribution to take advantage of the treatment of the contribution under 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 a donor receives any goods or services (e.g., tickets to a fundraiser) that would have reduced the donor's charitable deduction if the donor had 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 an individual 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 an individual may not receive a benefit in return for an IRA distribution, a contribution 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 an individual reaches the age 70 ½, he or she is generally required to receive distributions from his/her traditional IRA. Distributions from an IRA to a charity will receive the same treatment as a distribution to the individual taxpayer for the purposes of minimum required distributions.

Definitions**Percentage of Income Limitation**

In any 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 amounts over 50 percent can be carried forward and deducted in future years, taxpayers will face an immediate tax bill and 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 face limits on their itemized deductions. This reduction of itemized deductions is often referred to as the 3 percent floor. Prior to 2006, these taxpayers could 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 adjusted gross income exceeds a certain amount which is adjusted annually for inflation (currently \$150,500, or \$75,250 for married people filing separately). For the years 2006 and 2007 the reduction on itemized deductions for affected taxpayers is reduced by one-third.

Example of itemized deduction reduction: In the 2006 tax year, a married couple filing jointly has \$1,000,000 in adjusted gross income (AGI). Because the couple's AGI exceeded \$150,500, the phase-out rules will apply to the couple's itemized deductions. Itemized deductions for the couple were \$150,000.*

1. The couple's AGI	\$ 1,000,000
2. The couple's AGI over \$150,500 (the excess)	\$ 849,500
3. Three percent of the excess (3 percent of \$849,500)	\$ 25,485
Eighty percent of the itemized deductions (80 percent of \$150,000)	\$ 120,000
4. The lesser of the two calculations from Step 3	\$ 25,485
5. The lesser of the two calculations, multiplied by 2/3 (the reduction for 2006 & 2007)	\$ 16,990

The couple's itemized deductions will be reduced by \$16,990 resulting in the couple being able to claim \$133,010 in itemized deductions. Presuming the couple's tax rate is 35%, the reduction in itemized deductions potentially results in additional taxes of approximately \$5,945.

* Note that this is a simplified example that does not take into account itemized deductions such as deductions for medical expenses which are not affected by the reduction.

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.

DISCLAIMER

The information provided in this booklet is based on our continuing analysis of the relevant legislation and regulations. Every effort has been made to ensure accuracy of these documents. Please understand, however, that due to the complexity of the bill and the fact that many of these provisions introduce issues that are new to the Internal Revenue Code, this information is subject to change. The information is not a substitute for expert legal, tax or other professional advice and we strongly encourage grantmakers and donors to work with their 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.