

# Charitable Planning Perspectives

Planning Ideas for Our Professional Friends



Wentworth-Douglass Hospital  
& Health Foundation

## It's Back!

### The Charitable IRA Legislation Has Been Reinstated

On Oct. 3, 2008, President Bush signed into law, as part of the Emergency Economic Stabilization Act of 2008, an extension of the charitable IRA legislation. Originally enacted in the Pension Protection Act of 2006, this legislation provided your clients aged 70½ or older with tax incentives for charitable rollovers. This provision was in place during 2006 and 2007 but had expired as of Dec. 31, 2007. With the extension, however, clients can continue making gifts through 2009.

Thanks to the reinstated legislation, your clients can once again fulfill their charitable plans without the income tax burden typically associated with IRA assets. Prior law required those who wanted to make gifts to charities from their IRAs to first withdraw the desired amounts, then deposit the funds into checking accounts and write corresponding checks to the charitable organizations. This would force people to include any amount withdrawn from their IRAs in their gross incomes. They could then take charitable deductions for the gifts—but only up to 50 percent of their adjusted gross incomes. In effect, this caused some to pay more in income taxes than they would have if they hadn't made gifts at all.

**Example:** *A client withdraws \$50,000 from an IRA and gives it to charity. Prior to the gift, the client had \$20,000 in adjusted gross income. Now the total adjusted gross income is \$70,000, but the client can deduct only 50 percent this year, or \$35,000 of the \$50,000 gift. He or she can carryover the excess \$15,000 deduction for up to five additional years.*

Under the extended law, clients can make these IRA gifts without including the IRA distributions in their gross incomes. They will not, however, be able to deduct the distributions as itemized deductions.

### Extended Charitable IRA Provisions

- Clients must be 70½ or older on the date of the transfer.
- Gifts equaling as much as \$100,000 can be made in 2009 (this amount could have been transferred in 2008 as well).
- Clients must make the gift via a direct transfer to a qualified charity and not take receipt of the funds.
- The funds must come from an IRA. Other types of retirement accounts including TSAs or 403(b)s, 401(k)s, and pension or profit-sharing accounts are not eligible. If clients who are 70½ or older have

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### Numbers Tell the Story

The charitable IRA tax incentive proved successful in 2006 and 2007, evidenced by a voluntary survey conducted by the National Committee on Planned Giving ([www.ncpg.org](http://www.ncpg.org)) in which more than 900 charities reported their results. The survey revealed that more than \$104 million in charitable gifts were made under this provision, with an average gift size of \$16,000.

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funds in these other retirement accounts, they may be able to move a portion of that money into a Rollover IRA, then a charitable rollover could be made from the Rollover IRA. For the best results, make sure these transactions occur on separate days.

- Gifts to charitable trusts, donor advised funds and supporting organizations are not eligible for these tax benefits [see IRC 408(d)(8)(B)(i)]. This type of IRA gift also cannot be made in exchange for a charitable gift annuity.
- Gifts under this provision are not taken into account when determining the client's deduction for other charitable contributions. Because IRA gifts under the new law are not deductible, the amount given under this provision has no bearing on the amount of other charitable gifts given during the calendar year.
- Clients cannot receive an economic benefit or quid pro quo from the gifts. If they do, the gifts are not eligible charitable rollovers.
- The charity must provide sufficient substantiation to the donor. Appropriate substantiation includes statements to the following:
  - The IRA funds were not contributed to a donor advised fund, supporting organization, charitable trust or charitable gift annuity.
  - The gift was from an IRA.
  - The gift was transferred directly from the donor's IRA to the charitable organization.
  - It is the donor's intention that this gift qualifies as a charitable distribution from the IRA under IRC 408(d)(8).

There should be no statements that the gift is deductible.

#### Who Can Benefit? 3 Examples

1. Clients who do not itemize their federal tax deductions can benefit greatly from this legislation. Without this law, they would have to pay taxable income on their IRA withdrawals, and yet they couldn't deduct them as charitable gifts because they take the standard deduction.
2. Clients with higher incomes, who lose part of their itemized deductions, will also benefit because the distribution from their IRAs will not cause their AGIs to inflate.
3. Clients who live in states that do not allow state income tax deductions for charitable gifts will benefit. Without the law, these clients would have to claim their IRA distributions as taxable income on their state and federal returns and could deduct them on the federal return—subject to the AGI limits—but wouldn't receive state income tax deductions for their gifts. Thus, they would pay more in state income tax.

#### How Clients Can Make Gifts

Your client must contact his or her IRA administrator for the forms necessary to transfer gifts directly to public charities. It is important that the funds are transferred directly from the IRA to the charity. The client cannot receive the funds first and then make a gift using the proceeds from the distribution. It is up to each IRA administrator to determine what particular forms or procedures are needed to process an IRA gift. Expect different procedures with different institutions.

#### Charitable IRA Requirements

- Individual must be 70½ or older at the time of the gift.
- The gift can't be more than \$100,000 in 2009.
- The gifts must be made on or before Dec. 31, 2009.
- Funds must be transferred directly from an IRA.
- The gift recipient must be a qualified public charity. (This excludes gifts made to charitable trusts, donor advised funds and supporting organizations.)
- The gift must be outright. There can be no quid pro quo. (It cannot be made in exchange for a charitable gift annuity or other life income plan).

## Q&A: The Charitable IRA Legislation

**Q** Can clients use their required minimum distributions to make a gift?

**A** Yes, as long as the required minimum distribution is less than or equal to \$100,000 in 2009. This is a great opportunity for clients to avoid receiving the required distribution and paying income taxes on it. They can ask the IRA administrator to transfer the distribution directly to the qualified charitable organizations of their choice.

Required distributions from IRAs must begin no later than April 1 of the year following the year the IRA holder turns 70½ (an account holder turns 70½ six months after his or her 70th birthday). The distributions are taxed to the account holder as ordinary income. Therefore, if an IRA gift can qualify as part or all of the IRA holder's required distribution, it means he or she will have less taxable income for the year.

**Q** What types of IRAs are eligible?

**A** Traditional IRAs are included as well as Roth IRAs and Rollover IRAs. Distributions may be made from a SEP-IRA or SIMPLE IRA if the donor is 70½ or older and contributions to these plans are not made within the same qualified plan year as the year in which he or she desires to make a gift under this legislation.

**Q** Can a gift be made from an inherited IRA?

**A** Yes, but only if the person making a gift from the inherited IRA is 70½ or older and holds a true inherited IRA where he or she, as the beneficiary of a deceased person's IRA, is already taking minimum distributions.

**Q** How does my client report the distribution on his or her income tax return?

**A** The taxpayer will receive an IRS Form 1099-R from the IRA administrator and will report the amount taken from the IRA on line 15a (IRA distribution) of the IRS Form 1040; the taxable amount, if any, will be reported on line 15b. If the full amount given to charity is considered a qualified gift under the legislation, then the amount on line 15b will be zero.

**Q** I have some clients who would like to give more than \$100,000. How can this be accomplished?

**A** The legislation allows clients to make gifts in the 2008 tax year and the 2009 tax year. So, if a client made a \$100,000 gift before Dec. 31, 2008, he or she could give another \$100,000 in 2009. A spouse aged 70½ or older with his or her own IRA is governed by the same limits over the same period.

**Q** I have clients who have already named charitable organizations as the beneficiaries of their IRAs. What are the benefits to them if they make gifts now instead of at death?

**A** If clients have already named qualified charitable organizations as full or partial beneficiaries of their IRAs, there are no tax differences to them if they give up to \$100,000 per year as charitable rollovers. By naming the charitable organizations as beneficiaries at death, income and estate taxes are avoided on those funds. By making outright gifts of up to \$100,000 now, they are also making gifts free of income and estate taxes. The benefit to them may not be immediate financial rewards, but

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If your clients are contemplating making a gift to our organization, please let us know. We would be happy to assist in the transaction and to have the opportunity to show our gratitude.

# Q&A: The Charitable IRA Legislation

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rather the ability to enjoy their philanthropy while they are still alive. The downside, of course, is that their retirement nest eggs would be smaller.

## Q Can a client give his or her entire IRA?

**A** Yes, as long as it equals \$100,000 or less. If a client's IRA is valued at more than \$100,000, he or she can make a partial direct transfer from the account.

## Q Could a client give to more than one charitable organization?

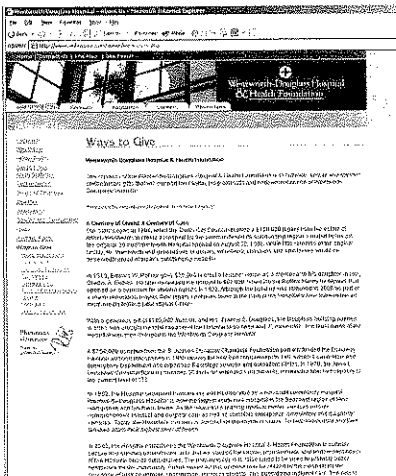
**A** Under the law, a client can give a maximum of \$100,000 in 2009, and that amount can be divided among several charitable organizations. For example, a client could give 10 organizations \$10,000 each, one organization \$100,000, or any other combination.

## Charitable Measures in Tough Times

If the new IRA legislation isn't right for your clients, consider these other charitable possibilities:

- **Charitable remainder annuity trust:** provides fixed payments for life from the trust—normally for gifts exceeding \$100,000
- **Charitable gift annuity:** provides fixed payments for life without the need of a trust arrangement—typically for gifts of \$10,000 or more

*The information in this publication is provided for general information purposes only.  
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