

IRA Charitable Rollover (Revised October 8, 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. While this provision expired on December 31, 2007, the Emergency Economic Stabilization Act of 2008 (H.R. 1424), enacted on October 3, 2008, extended the IRA charitable rollover provision so that eligible contributions may now be made through December 31, 2009. Note that the new law simply extends the charitable rollover and did not make other substantive changes to the operations of the provision.

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 still time-limited. It applies only to qualified distributions made before January 1, 2010.

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 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.

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 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 or by the itemized deduction reduction. (See [Definitions](#), below.). 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 advisors to determine the effect of these new rules on their specific tax situation.

How do individuals make a qualified charitable distribution?

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

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 70 ½, they are generally required to receive distributions from their traditional IRA. For the purposes of minimum required distributions, the Internal Revenue Service treats distributions from an IRA the same, whether individuals use the distribution for personal purposes or directs 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 over 50 percent and deduct those amounts in future years, they will face an immediate tax bill. The 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 must reduce their itemized deductions by 3 percent of the amount by which their income exceeds a certain amount. (The IRS adjusts that amount annually for inflation; for 2008, it was \$159,950, or \$79,975 for married people filing separately). This reduction of itemized deductions is often referred to as the 3 percent floor. Prior to 2006, higher income taxpayers could lose up to 80 percent of the value of their deductions. For 2008 and 2009, however, the 3 percent floor is lowered to approximately 1 percent – a reduction of two-thirds.

Example of itemized deduction reduction: In the 2008 tax year, a married couple filing jointly has \$1,000,000 in adjusted gross income (AGI). Because the couple's AGI exceeded \$159,950, 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 \$159,950 (the excess)	\$ 840,050
3. Three percent of the excess (3 percent of \$840,050)	\$ 25,202
Eighty percent of the itemized deductions (80 percent of \$150,000)	\$ 120,000
4. The lesser of the two calculations from Step 3	\$ 25,202
5. The lesser of the two calculations, multiplied by 1/3 (the reduction for 2008 & 2009)	\$ 8,401

The couple's itemized deductions will be reduced by \$8,401 resulting in the couple being able to claim \$141,599 in itemized deductions. Presuming the couple's tax rate is 35%, the reduction in itemized deductions potentially results in additional taxes of approximately \$2,940.

* 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.