GIVING THROUGH RETIREMENT PLANS

[This space may be used for logo and other contact information.]

As millions of people are now at or approaching retirement age, it is more important than ever to plan carefully for financial well-being during retirement years.

Considering longer life expectancies, lower interest rates and investment market fluctuations in recent years, making plans today to meet long-term financial needs can be challenging.

And, if charitable gifts are a priority, you may wonder how can you continue to give now and in the future.

Through thoughtful planning, you may be excited to learn you can:

- Ensure a healthy financial future for you and your loved ones.
- Make immediate tax-favored transfers to charity each year.
- Provide for future gifts as part of your long-range financial and estate planning.
- Arrange for charitable gifts that feature additional income, special tax savings and other benefits.

Continue reading to learn how you can enjoy these and other benefits by carefully planning your charitable gifts.

Tax-favored retirement plans

Many have taken advantage of generous tax incentives provided by Congress to encourage saving for retirement through contributions to IRAs, 401(k)s and similar plans.

These options usually feature income tax savings when contributions are made. Amounts in the plans then build tax free and are not generally subject to income tax until they are withdrawn.

Any funds remaining are included as part of the owner's estate for state and/or federal estate tax purposes, where applicable.

Making charitable gifts today

In some cases, retirement plan assets can be an excellent source from which to make charitable gifts today.

Consider the special opportunity for IRA giving

If you have a traditional IRA and are age 70½ or older, you may consider making a qualified charitable distribution (QCD) to eligible charities. You can make one or more gifts in this way up to $100,000 per year. Such gifts are not considered part of your taxable income and can count toward any required minimum distribution for the year. This can be an excellent way to make tax-free gifts whether or not you itemize your deductions. Other tax savings may also result from giving in this way.

If you have a Roth IRA, it may be preferable to take a tax-free withdrawal and use the funds to make tax-deductible gifts.

Making future gifts

You may want to make charitable gifts using assets remaining in retirement accounts after you have provided for yourself and your loved ones. These funds are subject to federal and state income tax, where applicable, when received by your heirs or other loved ones.

In addition, remaining funds will be included in your estate should state and/or federal estate taxes be due.

In some cases, combined taxes could amount to 50% or more of the retirement account left to your heirs. Careful planning, however, can help minimize the taxes that could be due on retirement plan assets during and after one's lifetime.

For example, many people choose to make charitable gifts from these assets and leave other less heavily taxed assets to heirs, often resulting in larger inheritances.

Example: David had previously planned to make a gift through his will to one of his charitable interests, and he named his nieces and nephews as beneficiaries of his retirement account.

He was surprised to learn that the retirement funds will be subject to state and federal income tax when received by his nieces and nephews and could also be subject to estate tax, substantially reducing the amount he intended to give them.

After consulting with his advisors, David decided his charitable gift would be made from his retirement plan, and his nieces and nephews would receive other assets not subject to income tax.

The amount David leaves to charity will be tax deductible for estate tax purposes, where applicable, whether left by will or through his retirement plan. His nieces and nephews will not owe income tax on the amount they receive through his will.

Through this simple change, David was able to leave a larger inheritance for his loved ones, while at the same time fulfilling his desire to make a meaningful charitable gift.

It is possible to change beneficiaries of your retirement plan remainder in the future should your needs or wishes change. However, the consent of a spouse may be necessary.

In some cases, you may want to set aside the amount designated for charity in a separate account. Check with your advisors for more details.

Other possibilities

If you are age 59½ or older, you may make withdrawals from retirement plans to fund your charitable gifts.

You would be required to report the withdrawn funds as income on your tax return;

if you itemize your deductions, you are then allowed an offsetting charitable deduction for your gift.

For those who can deduct the full amount of the withdrawal/gift, this can result in being able to use these funds without incurring unnecessary income, gift or estate taxes.

You may also want to consider making gifts of appreciated securities or other assets (if they would be fully deductible) and use the cash withdrawn from a retirement account to diversify your investments without incurring capital gains tax. See the following example:

Example: John and Alison have committed to making a charitable gift over a five-year period. After consulting with their tax advisors, they decide to make gifts each year with appreciated stock. They benefit from an income tax deduction for the full value of the securities while also bypassing capital gains tax.

The couple also plans to make withdrawals from their retirement accounts equal to the value of the securities they donate each year. While they will report the withdrawal amount as income each year, it will be offset by their charitable deduction for the full value of the donated securities.

They then use the cash to purchase new securities with a more favorable cost basis for tax purposes, restructuring and diversifying their portfolio in a tax-efficient manner.

The next step

After you have discussed the charitable aspects of your estate and financial plans with advisors and decided you would like to make an immediate or future gift from your retirement assets, ask the administrator of your plan for the forms necessary to carry out your wishes.

Other ways to give

If you have reached limits on the amount you can contribute to tax-favored retirement plans, there are charitable gift planning options you can use to help supplement those accounts. These possibilities feature a number of benefits, including federal income, capital gains, estate and gift tax savings.

Some options allow you to set aside additional funds that can grow tax free and provide increased income during retirement years. Or, you may arrange for a fixed or variable income for a surviving spouse or other heirs for life or other period of time.

In some cases it may make sense to leave retirement fund assets to a charitable trust or other arrangement to provide for loved ones first and then make a gift to charity.

These options allow you to enjoy immediate tax benefits because amounts contributed in this way will ultimately be devoted to charitable purposes.

We will be pleased to provide you and your advisors with additional information regarding any of the ideas presented in this booklet.

Technical Advisory Section

Any funds withdrawn during life from an IRA or other tax-favored retirement plan (other than Roth IRAs) will normally be subject to income tax. If a donor is over the age of 59½ and is not subject to taxes on early withdrawals—and donates these funds for charitable use—there is an offsetting charitable income tax deduction; when properly structured, the transaction can be a "wash" for tax purposes. The impact of state tax laws should also be considered where applicable.

When individuals are facing requirements to withdraw funds from an IRA or other tax-favored retirement account in excess of what they currently need to fund living expenses, they may consider making special gifts to fulfill charitable commitments utilizing the withdrawal amounts.

If they have highly appreciated securities, they may wish to use the securities to fund their gifts, while using cash from the withdrawal to make new investments at a higher cost basis for tax purposes.

As part of the Pension Protection Act of 2006 (PPA), Congress enacted a number of charitable giving incentives and reforms. When gifts from retirement accounts are concerned, the PPA made an exception to the law outlined above and provided in section 408(b) (8) that individuals aged 70½ or older could direct a total of up to $100,000 per year for distribution from their traditional or Roth IRA directly to an organization described in section 170(b)(1)(A) (other than an organization described in section 509(a)(3)) or a donor-advised fund (as defined in section 4966(d)(2)).

After a number of temporary extensions of the IRA giving provisions of the PPA, Congress made the advantages of giving through IRAs permanent in legislation enacted in 2015.

To qualify for gifts from an IRA the qualified charitable distribution (QCD) must be made by the IRA trustee to the charitable recipient and must be otherwise fully deductible. Distributions to fund charitable gift annuities, charitable remainder trusts and other split-interest gifts do not qualify, nor do gifts that feature other tangible benefits that would otherwise cause a reduction in the tax-deductible amount.

Amounts transferred in this manner are not included in a taxpayer's AGI but can qualify as all or part of a mandatory withdrawal. This offers special advantages for donors who otherwise exceed 60% of AGI limits on their gifts or do not itemize their charitable gifts or other deductible expenses. Giving in this way can also prevent other adverse tax consequences such as increased taxation of social security income.

For a complete explanation of giving directly from IRAs, see the Joint Committee on Taxation explanation of H.R.4 at ww.house.gov/jct/. See JCX-38-06 (August 3, 2006) publication.

Making testamentary gifts from retirement accounts

From a tax planning perspective, one of the most efficient ways to leave a gift to a charitable interest at death may be through a traditional IRA or other qualified retirement plan.

Simplified example: Joan, a wealthy widow, age 75, plans to leave her $100,000 IRA to her granddaughter, Ellen. An IRA balance as well as other qualified retirement plans may be subject to estate taxes (at an assumed rate of 40%) and income taxes (at an assumed rate of 37%). State income and estate taxes may also be due on these amounts. Under these assumptions, therefore, Ellen could eventually receive less than half of the IRA balance.

Why are these funds subject to both estate and income taxes? Because qualified retirement fund balances are considered income in respect of a decedent (IRD) under Internal Revenue Code section 691. (Note that section 691(c) provides for an income tax deduction for estate tax attributable to IRD.)

Joan, on the other hand, could leave the $100,000 in the IRA directly to one or more charitable interests free from all income and estate taxes. There would be no federal estate tax because of the estate tax charitable deduction and no income tax because of the charitable organization’s exemption from income taxes.

If Joan wished to leave bequests to both Ellen and her charitable interest(s), it would be better for Ellen to receive assets other than the IRA balance. This way, Ellen’s inheritance would possibly be subject to estate tax, but not income tax. If no estate tax were due, Ellen would receive the entire $100,000.

Special considerations

Providing for charity: The term “designated beneficiary” is a technical term that primarily includes individuals. An irrevocable trust that meets certain requirements can also be a designated beneficiary. Although a charity can be a beneficiary, it cannot be a designated beneficiary. Neither can a charitable remainder trust (CRT). Nor can any of multiple beneficiaries if any one of them is a charity or a CRT.

If, however, the plan owner names both a charity (or a CRT) and an individual as beneficiaries and the distribution to the charity (or CRT) is made before the date for determining whether there is a designated beneficiary, the individual beneficiary will be considered a designated beneficiary.

Spousal rollover: If the surviving spouse of an IRA owner receives a lump-sum distribution from the IRA, the surviving spouse generally may roll the distribution over into his or her own IRA tax free within 60 days of receipt.

If a spouse rolls funds to their own IRA, it could then be wise for the spouse to leave all or a portion of any amounts remaining at death to a qualified charity on a tax-free basis.

Qualified Terminable Interest Property (QTIP) trust: It is possible, subject to certain requirements, to make the QTIP election with respect to both an IRA and a trust named as beneficiary of the IRA. See Rev. Rul. 2000-2 and Rev. Rul. 2006-26. In this case, it may be desirable to provide that part or all of any principal remaining in the trust at the surviving spouse’s death go to charity.

Rollover to charitable trusts: As of January 2018, federal tax law does not afford any means of rolling money out of an IRA or other tax-qualified retirement plan account during one's lifetime directly to a trust or other split-interest charitable gift without the account owner having to report the money as income for federal income tax purposes.

A charitably motivated individual might, however, want to withdraw money from his or her IRA today, place part of the money in a CRT (or other charitable life income arrangement) to provide a retirement income and use the remainder of the money to pay tax on the withdrawal. In this case, the charitable deduction with respect to the trust will help reduce but not eliminate the tax owed.

Designating a charitable remainder trust as beneficiary: While tax-free transfers from IRAs to trusts and other split-interest gifts are not possible during lifetime, it is possible to name a CRT to receive the balance of an IRA at death. In this case, the money is not subject to income tax on the transfer from the IRA to the CRT because of the CRT's tax exemption under Code section 664(c). The individual beneficiary of the CRT simply pays income tax on the distributions he or she receives from the trust.

Upon the transfer from the IRA to the CRT, an estate tax charitable deduction is allowed for the value of the remainder interest in the trust as determined under IRS regulations. When IRA assets are left at death to a CRT, a question arises: What becomes of the income tax deduction under Code section 691(c) for estate tax attributable to income in respect of a decedent (IRD)?

In Letter Ruling 199901023, the IRS said the deduction was allocated to the CRT and was used to reduce the amount of first-tier income (ordinary income) for trust income tax accounting purposes.

With increased estate tax exemptions enacted as part of the *Tax Cuts and Jobs Act of 2017*, planning for estate tax consequences of establishing a CRT at death will be less of a consideration for many. However, the passage of *The Setting Every Community Up for Retirement Enhancement Act of 2019* (The SECURE Act) may lead to increased interest in funding CRTs for loved ones with retirement plan assets.

Donors and advisors should always check the latest statutes and regulations prior to completing gifts in this manner.

Other relevant rulings: In Letter Ruling 9237020, the IRS considered a proposal to leave residual IRA money at the IRA owner's death to a charitable remainder unitrust, which would make payments to the IRA owner's child for a term of 20 years and then distribute all of its assets to charity. The IRS ruled that the IRA money would not be subject to income tax as it rolled out of the IRA into the unitrust because of the trust's exemption from income taxes under IRC section 664(c). The IRS also ruled that the IRA money rolling into the unitrust would qualify under the usual rules for the federal estate tax charitable deduction.

In Letter Ruling 9253055, the IRS took the same basic position with respect to a proposal to leave, at death, residual money in a corporate retirement plan account to a unitrust for the benefit of the donor/employee's spouse. This ruling stated that the spouse's interest in the unitrust would qualify for the federal estate tax marital deduction.

This type of plan can make sense for the charitably motivated person who (1) wants to shield residual IRA or other retirement plan money from what may seem to be punitive estate and income taxes; (2) wants to provide an income to a family member; and (3) likes the idea of outlining the use of any remaining funds at the termination of the trust.

Retirement Plan Information

Type:

❑ Traditional IRA ❑ Roth IRA ❑ 401(k) ❑ 403(b)

❑ Other ____

Name of account holder __________________________

____

Name of plan administrator (e.g. brokerage firm, bank or mutual fund) ______________________________

Contact information_______________________________

____

Account number _________________________________

Approximate value _______________________________

Primary beneficiaries ______________________________

Contingent beneficiaries ____________________________

Type:

❑ Traditional IRA ❑ Roth IRA ❑ 401(k) ❑ 403(b)

❑ Other ____

Name of account holder __________________________

____

Name of plan administrator (e.g. brokerage firm, bank or mutual fund) ______________________________

Contact information_______________________________

____

Account number _________________________________

Approximate value _______________________________

Primary beneficiaries ______________________________

Contingent beneficiaries ____________________________

[This space as well as the front cover may be used for logo and other contact information.]