



EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

© 2008 PG Calc. All rights reserved

While the primary purpose of the Emergency Economic Stabilization Act of 2008 was to authorize the government to purchase problematic mortgaged-backed securities, the Act also contains incentives for charitable giving. From a gift planning perspective, the most important of these is an extension of the IRA charitable rollover, which was one of the 2006 Pension Protection Act provisions that expired at the end of 2007. Those provisions have now been extended through the end of 2009. Following is a summary of the IRA charitable rollover provision as well as some of the other incentives, and their likely effects on charitable giving.

IRA Charitable Rollover

The new law provides that in each of the years 2008 and 2009, an owner of a traditional or Roth IRA, who is age 70½ or older, may instruct the trustee to distribute directly to a public charity up to \$100,000 without the distribution being included in taxable income, and that the distribution will count toward the IRA owner's mandatory withdrawal amount.

The Fine Print

To qualify for IRA rollover treatment, the donor must direct the IRA manager to transfer funds directly to charity. A withdrawal followed by a contribution will still have to be reported as income. The donor must be at least age 70½ and the donee must be a tax-exempt organization to which deductible contributions can be made. Donor advised funds and supporting organizations are not eligible. The gift must be outright; rollovers to a planned gift, such as a gift annuity or a charitable remainder trust, do not qualify. Neither do outright

distributions to charity from employer-sponsored retirement plans, such as Simple IRAs, 401(k)s, and 403(b)s. Also note that IRA rollovers may be includable in a donor's income for state and local tax purposes and may not earn an offsetting charitable deduction, depending on state and local law.

Why Rollover?

Under prior law making a gift of IRA assets to charity was a two-step process. A donor would withdraw assets from their IRA that would be included in their income for tax purposes. The donor could then make a gift of the withdrawn assets to charity. The deduction from the gift would offset the income taxes on the withdrawal. However, some donors either may not be able to offset the income from the withdrawal with the deduction or don't want to increase their income with an IRA withdrawal.

Therefore, a rollover of IRA assets to charity would be advantageous for:

- Donors who do not itemize their deductions. Qualified charitable distributions from IRAs will eliminate the need for donors to claim an income tax charitable deduction, meaning non-itemizers will enjoy the equivalent of a charitable deduction. In fact, some donors who were itemizing for the sole purpose of claiming deductions for their charitable gifts may no longer need to do so if they fund their gifts from their IRAs.
- Donors who would be unable to deduct the entire contribution because of the 50-percent-of-AGI limitation. Donors who have maximized their ability to claim income tax deductions due to the 50-percent-of-AGI limitation will find they can give more because rollover distributions operate independently of the percentage limitation rules and, therefore, don't affect other gifts to which the limitations apply.
- Donors with a high income who might lose some of their exemptions, credits, and itemized deductions if normal income is inflated by a withdrawal. For higher income

earners, the impact of receiving additional income on the deductibility of medical expenses, miscellaneous itemized deductions (subject to the two-percent-of-AGI limitation), the phase-out of itemized deductions and the child tax credit, and application of the alternative minimum tax can often result in a net income tax cost of making a charitable gift.

- Donors with more modest incomes. Adding IRA withdrawals to their other income might cause more of their Social Security payments to be taxable.
- Donors who reside in a state where charitable contributions are not deductible on the state income tax return. In states that do not allow itemized deductions, plan owners who made taxable withdrawals from their IRAs and then donated them under the old rules did not enjoy an offsetting deduction against state income tax for making a charitable gift. Because states generally follow federal income inclusion rules, IRA rollover distributions should be excluded for state income tax purposes under the new law. Accordingly, taxpayers residing in these states will benefit if their state continues to follow the federal rules.

Whatever their circumstances, donors will find a direct distribution simpler than the two-step process of taking a personal withdrawal followed by a charitable contribution, and with the new law, they can do that for at least the next two tax years.