Tax-free charitable IRA distributions extended for 2012 and 2013

Charitable IRA distribution tax alert

The American Taxpayer Relief Act of 2012 ("ATRA") provides for limited extension of the qualified charitable individual retirement account (IRA) distribution provisions contained in the Pension Protection Act of 2006. ATRA was signed into law on January 2, 2013 and allows eligible IRA owners to make qualified charitable distributions up to $100,000 ($200,000 for married couples who each qualify separately) per year from traditional IRAs for 2012 and 2013 without having to pay taxes on the distribution. These distributions are not tax-deductible and must be made payable directly to a qualified charity.[1, 2]

Transferring your wealth tax-efficiently can make a huge difference in helping you pass on more of your assets to your heirs and favorite causes. A number of philanthropic strategies are designed to allow you to direct your wealth in ways that reflect your values and beliefs, meet personal financial goals and objectives, and provide important tax benefits. This is a complex strategy and you should consult with your tax advisor before making a tax-free charitable distribution from your IRA.

As you prepare a plan, one strategy you may want to consider is to make a tax-free charitable distribution from your traditional IRA or rollover IRA (IRRA®).

Who qualifies for this strategy?

- You must be age 70 ½ or older at the time of the distribution.
- You may distribute any amount up to $100,000 per year in tax years 2012 and 2013.
- You and your spouse may make combined distributions up to $200,000, provided each of you owns at least one IRA, and each of you is at least 70 ½ years old at the time of the distribution and can make a qualified charitable distribution up to $100,000 from your respective IRA accounts.
- You may distribute from your traditional IRA and IRRA. Distributions may not be made from SEP and SIMPLE IRAs *if an employer contribution was made for the tax year in which your charitable contribution would be made*.
- Qualified charitable distributions made through January 31, 2013 can be deemed to be made for 2012. Qualified charitable distributions which are being taken as part of or all of your 2012 required minimum distribution (RMD) will be considered timely RMDs if made by January 31, 2013.

Where can you direct contributions?

- The distribution proceeds must be paid by check directly to the charity with the exception of distributions made in December 2012, which can still be considered a qualified charitable distribution if the distribution is transferred to a qualified charity before February 1, 2013.
- Charities must receive distributions for 2012 no later than January 31, 2013 to be considered donated to the charity for the 2012 tax year. The deadline for 2013 qualified charitable distributions is December 31, 2013.
- Donor advised funds and certain private foundations are not eligible charities. You must check with your tax advisor to determine whether a charity is qualified to receive an IRA charitable distribution under applicable tax law.

How do you apply this strategy?

Your Financial Advisor can help you evaluate this strategy to determine whether it makes sense in your overall estate plan. If you decide to implement this strategy and initiate a distribution from your IRA, you or your Financial Advisor must:

- Complete the *IRA/IRRA One-Time Distribution Form.* Complete the Merrill Lynch direct charitable distribution form letter. Merrill Lynch will send this letter to the charity with the check on your behalf.

Can you use the qualified charitable distribution to meet required minimum distributions for the year?

Yes, you can use up to the entire $100,000 per person. If you have not taken your RMD for 2012 yet, and you plan to take the RMD as a qualified charitable distribution, you have until January 31, 2013 to make the distribution and have your 2012 RMD still be considered timely. If you have not taken your RMD for 2012, and are not taking a qualified charitable distribution as your RMD or part of your RMD for 2012, you must have taken your RMD by December 31, 2012.

Can you consider distributions taken during December 2012 to be qualified charitable distributions?

Distributions taken in 2012 can be considered qualified charitable distributions even if they were not paid directly to the charity, as long as they otherwise meet the requirements for qualified charitable distributions and the distribution is transferred to the qualified charity before February 1, 2013. Distributions taken prior to December 2012 that were not paid directly to an eligible charity *are not considered qualified charitable distributions*. There is no provision in the extension for "corrected" distributions. Any required distributions made to an individual in December 2012 can be treated as qualified charitable distributions as long as they otherwise meet the guidelines for eligible charitable rollover except that the payment was not made directly to the charity.

To whom should your distribution checks be payable?

Merrill Lynch will make the check payable to the charity. You cannot receive a distribution payable to you and then issue a second check to the charity.

How is recovery of basis handled?

You may only take qualified charitable distributions from taxable amounts in an IRA. For purposes of the charitable distribution rules, pre-tax assets are treated as having been distributed first from your account.

How is the qualified charitable distribution status determined?

It is the sole responsibility of the IRA and IRRA account owners to determine whether a distribution constitutes a qualified charitable distribution, including, but not limited to, determining whether the donee qualifies as an eligible charitable organization. You should consult a tax professional before considering any distributions from an IRA.

What happens if you have periodic distributions of RMDS?

You should request an additional one-time distribution to take advantage of this provision.

[1] The applicable law defines a qualified charity as an organization described in Internal Revenue Code Section 170(b)(1)(A), other than a Code Section 509(a)(3) private foundation or a Code Section 4966(d)(2) donor-advised fund.

[2] Distributions made in December 2012 that were not paid directly to a qualified charity can still qualify for QCD treatment as long as the distribution is transferred to the charity before February 1, 2013.

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