The Impact of the Fiscal Cliff Legislation

A Brief Window for Charitable IRA Rollovers

January 11, 2013

On January 2, 2013, President Obama signed into law the American Taxpayer Relief Act of 2012 (the "Act"), commonly known as the "fiscal cliff" legislation. The legislation has temporarily reopened the opportunity for some donors to make significant charitable contributions using funds from individual retirement accounts ("IRAs") in 2012 and 2013. If you wish to take advantage of this opportunity for 2012, you will need to act before the end of January 2013. This Client Alert focuses on the IRA charitable rollover provision.

Charitable Giving Through IRA Rollovers

The Act extends for two years—through December 31, 2013—a provision of the Internal Revenue Code allowing an individual age 70½ or older to make a tax-free distribution (often called a "rollover") of up to $100,000 per year from an IRA to a qualified charity. As a result, you can avoid paying income tax on an otherwise taxable distribution from an IRA by directing the distribution to a qualified charity.

Because the charitable rollover provision had expired at the end of 2011, the Act contains certain transition rules that may allow you to utilize this IRA rollover option for the 2012 taxable year if you act during January 2013. There are two alternative ways to take advantage of these transition rules:

- **Convert an IRA distribution received in December 2012 into a 2012 qualified charitable distribution by directing it to a qualified charity in January 2013.**

If you received an IRA distribution during December 2012 and were age 70½ or older at the time of the distribution, the Act allows you to make a cash gift in the amount of the distribution (up to $100,000) to one or more qualified charities during January 2013 and treat the contributed amount as a qualified charitable distribution made from an IRA on December 31, 2012. By doing so, you would avoid inclusion of the IRA distribution in income for 2012 up to the amount of the January contribution to a qualified charity or charities. If you wish to take advantage of this transition rule, you should consult with a tax advisor to make sure that the transfer of the 2012 IRA distribution to the charity is properly documented.

- **Make an IRA rollover distribution in January 2013 and treat it as a qualified charitable distribution made in 2012.**

If you are age 70½ or older and do not have a December 2012 distribution to redirect, you may still utilize the rollover provision for 2012 by making a rollover distribution of up to $100,000 to a qualified charity during January 2013. That distribution can be treated as a qualified charitable distribution made on December 31, 2012. If you take advantage of this transition rule, you will still be able to make a separate rollover distribution for 2013.

Who May Benefit

The renewal of the rollover provision may benefit you if you are age 70½ and older. First, the rollover provision could be beneficial if you are subject to the charitable deduction limit of 50% of adjusted gross income. Qualified charitable distributions from an IRA are treated as tax-free distributions to charity, so you can make distributions to qualified charities directly from an IRA even if you already made deductible charitable gifts equal to or in excess of the 50% limit. Second, the rollover provision may benefit you if you are subject to the so-called "hair cut" on itemized deductions that applies to certain taxpayers beginning in 2013. By making qualified charitable distributions from an IRA, you can limit the effects of the 2013 hair cut while continuing to support your favorite charities. Finally, the rollover provision may benefit you if you take the standard deduction on your tax return. In this instance, you can make qualified charitable distributions from an IRA without increasing your taxable income or itemizing deductions.

Limitations

If you decide to take advantage of these rules, you should confirm in advance that the charities satisfy the applicable qualification rules. Some section 501(c)(3) organizations that are otherwise eligible to receive deductible charitable contributions from donors—such as donor-advised funds, supporting organizations, and private non-operating foundations—are not eligible to receive qualified charitable distributions from an IRA. In addition, anyone making rollover distributions to qualified charities should be aware that those distributions may be subject to *state* income tax.

Conclusion

The "fiscal cliff" legislation has reopened the opportunity to make significant charitable contributions using funds from IRAs in 2012 and 2013, but if you wish to take advantage of this opportunity for 2012, you will need to act before the end of January 2013.

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