IRA Charitable Rollover – A Gold Mine with a Trap

By Dennis Walsh, CPA

The IRA charitable rollover, authorized by IRC Section 408(d)(8), has grown in popularity since being made a permanent part of federal income tax law.

This provision permits an owner of a traditional individual retirement account (IRA) who has reached age 70 ½ to make an annual contribution of up to $100,000 directly from the IRA to a qualified charity.

As a result of bypassing the donor's tax return, this giving alternative may encourage larger charitable gifts as a result of not being subject to the annual percentage of adjusted gross income (AGI) limitations for charitable deductions, while also being applied to a donor's required minimum distribution. And because of certain exclusions and deductions sensitive to changes in AGI, it can result in added overall tax savings.

But donors, charities, and their advisors need to beware of potential hazards. As explained in the following Joint Committee on Taxation excerpt, if a donor receives any amount of personal benefit from the recipient charity in connection with such a rollover contribution, the entire amount of the exclusion will be disallowed. This means that it is vital that a charitable rollover not be solicited or pledged in connection with a fundraising activity or methodology where goods, services, or other donor incentives are provided to donors at no charge, such as fundraising events that include meals, entertainment, and other amenities.

"The exclusion applies only if a charitable contribution deduction for the entire distribution otherwise would be allowable (under present law), determined without regard to the generally applicable percentage limitations. Thus, for example, <u>if the deductible amount is reduced because of a benefit received in exchange</u>, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, <u>the exclusion is not available with respect to any part of the IRA distribution</u>." (1) (emphasis added)

Note also that a donor must have the same timely obtained written confirmation from the charity applicable to regular cash gifts. An IRA trustee will not provide this on behalf of the charity in the case of a charitable rollover.

This confirmation must generally include a statement that either no goods or services were provided to the donor, or a description and good faith estimate of the value of any goods or services provided in connection with the gift. See IRC Section 170(f)(8) and IRS Publication 1771 for complete requirements

While the Congressional Committee language is not included in the enabling Statute or in Regulations issued to date, as an expression of Congressional intent it will clearly come to the

aid of the IRS in the event of litigation.

In contrast to a deduction for a traditional cash gift subject only to reduction by the value of a personal benefit received as part of a fundraising activity, any amount of personal benefit received in connection with an IRA charitable rollover will disallow the entire exclusion

If the IRS determines that a donor benefit of any amount is provided in connection with a charitable IRA rollover, then it has the authority to assess the gross IRA distribution as income, necessitating that the donor amend his or her income tax return to claim a charitable contribution deduction. The IRS cannot automatically apply an offsetting charitable deduction since it does not know if the donor obtained adequate substantiation from the charity by the applicable date. But that's not the end of it.

Under these circumstances, presumably the charity will not have disclosed the estimated value of personal benefits provided as required ―――――― under the *quid pro quo* reporting rule of Section 6115 since this would be fatal to the rollover exclusion as discussed.

And since a donor must obtain the required written statement on or before the earlier of the date the return is originally filed or the due date of the return including extensions, the charity cannot provide a corrected receipt that includes the value of benefits after the fact in support of an amended return. These unfortunate circumstances would leave no opportunity for a donor to claim an offsetting charitable deduction on an amended return, exposing the entire IRA distribution to tax and interest.

Because the requirement for an affirmative statement regarding the presence or absence of donor benefits and related substantiation requirements are codified as absolute at IRC Section 170(f)(8)(C), Courts have been completely unforgiving in cases where the timeliness or completeness of written gift substantiation is at issue.

Even if the absence of a timely and correct written gift confirmation escapes IRS notice and the donor is successful with an amended return, however, the stress, cost, and embarrassment associated with such an outcome and resulting damage to donor goodwill must clearly be avoided

In summary, charitable organizations should avoid soliciting or accepting a charitable IRA rollover in connection with a fundraising effort where any amount of personal benefit is provided to a donor. If there is doubt as to the presence of an applicable donor benefit, err on the side of caution. And be sure charities are providing the required substantiation for IRA charitable rollovers in the same manner as for other cash gifts.

(1) *General Explanation of Tax Legislation Enacted in the 113th Congress Prepared by the staff of the Joint Committee on Taxation March 2015*