



INCREASED CHARITABLE GIVING THROUGH THE LEGACY IRA ACT

September 10, 2018

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Steve Leimberg's Charitable Planning Newsletter

Current law allows taxpayers age 70½ or older to make tax-free transfers from their IRAs to charitable organizations. The Legacy IRA Act (H.R. 1337) would allow middle-class taxpayers 65 or older to make transfers from their IRAs to fund charitable remainder trusts and charitable gift annuities and enable them to retain retirement income, with a gift of the assets to the designated charity on death. This commentary reviews how the Legacy IRA Act works.

Comment:

Current law: Charitable-minded Americans age 70½ or older are allowed tax-free transfers from their IRAs to make direct gifts to charitable organizations.

The Legacy IRA Act (H.R. 1337) would expand current law and demonstrate Congress's support of American charities by allowing middle-class taxpayers to more fully participate in philanthropy. The bill allows taxpayers 65 or older to make transfers from their IRAs to fund life income plans (charitable remainder trusts and charitable gift annuities) and enables them to retain retirement income, with a gift of the assets to the designated charity on death.

This low-cost legislation (\$106 million over 10 years) encourages generosity and helps offset the loss of the charitable deduction for those who will no longer itemize due to the increased standard deduction. It is also an opportunity for older Americans (both itemizers and nonitemizers) to increase their philanthropy and maintain financial security through life income gifts. Retirement income from life income plans is fully taxed.

Why are we telling you about The Legacy IRA now? The House of Representatives is expected to introduce a sequel to the TCJA in September. The bill's current nickname is "TCJA 2.0." The bill would make TCJA's expiring tax cuts permanent. Pundits say it will easily pass the House, but could be dead on arrival in the Senate with 60 votes needed for passage.

The House Ways and Means Committee is also considering retirement plan changes. Retirement issues aren't unpopular with the Democratic minority in the Senate. The retirement provisions can be spun off from other tax provisions and *could* pass in the House and *could* pass in the Senate too!

Back to current law for a moment. Individuals age 70½ or older can make direct (outright) gifts from an IRA of up to \$100,000 per year to public charities (other than donor advised funds and supporting organizations) and to private operating and pass-through (conduit) foundations without having to report the IRA distributions as taxable income on their federal income tax returns. **And** these distributions to charity satisfy the otherwise taxable Required Minimum Distribution (RMD) payments. A charitable deduction isn't allowable.

First enacted in 2006, this law was made permanent by the PATH Act of 2015. Direct IRA rollovers have helped American charities feed the hungry; and provide education, medical services, housing assistance, and myriad other services that Americans need.

Now the details of The Legacy IRA.

Qualified charities under The Legacy IRA Act are the same donees authorized for direct outright IRA transfers to charities.

Annual ceiling on transfers from a donor's IRA for a life income plan under The Legacy IRA Act: \$400,000, for individuals 65 or older. For individuals 70½ or older, the combined ceiling for direct and life income transfers from their IRAs is \$400,000, with a \$100,000 cap for direct transfers.

No loss to the government on Required Minimum Distributions under The Legacy IRA Act. The types of life income plans assure that the annual taxable payments will generally be equal to (or greater than) what individuals must have received under the required minimum distribution rules had they kept the funds in their IRAs instead of rolling them over for charitable life income plans.

Minimal revenue cost to the government of The Legacy IRA Act. Under the authorized life income plans, the IRA owners will be taxed on income received at ordinary income tax rates. Because the payouts are 5 percent or more, there generally will be more income paid from the charitable life income plans than under the normal minimum required distribution rules. The only authorized income beneficiaries of the life income plans are the individual IRA owner, his or her spouse or both of them. At death, the assets in the plan go directly to the named qualified charity or charities and not to family members.

Why wouldn't IRA owners just give outright to charity (direct gifts) from their IRAs as provided under the now permanent law? Many IRA owners want to make charitable gifts, but also need retirement income. The life income IRA rollover is a way for donors of average resources to combine charitable gifts with a steady flow of income during retirement. Many charities have donors "standing by" to make life income charitable gifts from their IRAs.

The Legacy IRA is a Middle-Class Charitable IRA Rollover. It allows average Americans (who meet the minimum age requirement) not just wealthy taxpayers to benefit charities. And it is the equivalent of a charitable deduction; not being taxed on income is comparable to a deduction. The Legacy IRA is in effect a WMD—a weapon of mass deduction.

Four-year trial. The Legacy IRA Act would have a four-year trial period

providing adequate time to determine the efficacy of the provision that excludes from gross income IRA distributions to life income plans.

Cost. The bill's cost is only \$106 million over 10 years. This is a small fraction of the money that charities will receive as a result of enactment.

Types of Life Income Charitable Gifts that Could Be Rolled Over From an Individual's IRA to Fund a Life Income Gift that Would Pay Taxable Income to the Donor

Charitable Remainder Unitrust (CRUT). Pays the income beneficiary an amount for life (at least annually) determined by multiplying a fixed percentage (set at the outset) of the net fair market value of the trust assets, revalued each year. On death of the life beneficiary the charity gets the remainder. The fixed percentage cannot be less than 5 percent and the remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust.

Charitable Remainder Annuity Trust (CRAT). Pays the income beneficiary for life a fixed dollar amount (at least annually) specified in the trust instrument. On the death of the life beneficiary the charity gets the remainder. The fixed dollar amount must be at least 5 percent of the initial net fair market value of the transferred assets and the remainder interest must be at least 10 percent of the initial net fair market value of all property placed in the trust.

Charitable Gift Annuity (CGA). A donor transfers assets to a qualified charitable organization in return for its promise to pay the donor fixed payments (at least annually) for life. The value of the assets paid by the donor to

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the charity exceeds the actuarial value of the payments made by the charity to the annuitant. The transferred assets become a part of the charity's general assets and the annuity payments are backed by all the charity's assets—not just the transferred property. The charitable gift portion must be more than 10 percent.

These charitable organizations have publicly supported the Legacy IRA Act: Alliance for Strong Families and Communities; American Cancer Society Cancer Action Network; American Council on Gift Annuities; American Heart Association; Americans for the Arts and Americans for the

Arts Action Fund; American Red Cross; Association of Art Museum Directors; Boy Scouts of America; Boys and Girls Clubs of America; Catholic Charities USA; Dance/USA; Girls Inc.; Girl Scouts of the USA; Goodwill USA; Jewish Federations of North America; League of American Orchestras, March of Dimes; Mental Health America; National Association of Charitable Gift Planners; National Catholic Development Conference; National Multiple Sclerosis Society; OPERA America; Salvation Army; United Way Worldwide; Volunteers of America; YMCA of the USA; and YWCA USA.

Suggested immediate action. If you believe this would be good legislation (we do!):

- Ask the chairman and members of the House Ways and Means Committee to include the Legacy IRA in the legislation being considered. (Ways and Means members are listed at the end of this article.)
- Seek to have a companion bill to the Legacy IRA Act introduced in the Senate by members of the Senate Finance Committee. (Senate Finance Committee members are listed at the end of this article.)
- Ask Senate Finance Committee members John Thune (R-SD) and Ron Wyden (D-OR) to include the Legacy IRA Act in their Charity Act (S. 1343).

The Charity Act has a better chance of enactment than many other bills. Mr. Thune is the chairman of the Republican Policy Committee, is the third ranking Republican in the Senate and is a member of the Senate Finance Committee. This bipartisan bill is cosponsored by Ranking SFC member Ron Wyden (D-OR). and Senators Robert P. Casey, Jr. (D-PA); Pat Roberts (R-KS); Jerry Moran (R-KS); Joe Donnelly (D-IN); Gary C. Peters (D-MI); Amy Klobuchar (D-MN); Rob Portman (R-OH); Debbie Stabenow (D-MI); and John Boozman (R-AR).

Summary of Charity Act (S. 1343):

• **Sense of the Senate.** Encouraging charitable giving should be a goal of tax reform. Congress should ensure that the value and scope of the

deduction for charitable contributions isn't diminished during a comprehensive rewrite of the tax code.

- • Foundation Excise Taxes would be simplified.
- • Non-Profits would be required to File Form 990 Electronically.

• **Donor Advised Funds IRA Rollover Eligibility and Transparency:** Current law allows an Individual Retirement Arrangement ("IRA") owner who is age 70-1/2 or older generally to exclude from gross income up to \$100,000 per year in distributions made directly from the IRA to certain public charities. The proposal would make donor advised funds (DAFs) eligible for the donations. Sponsors of DAFs would be required to disclose whether they have an official policy on "inactive" or "dormant" funds, and if so, describe the policy or include a copy of it with the return. Sponsors of DAFs would also be required to disclose average payouts over the most recent three-year period.

Suggestion. Thank Senator Thune and the cosponsors (especially Senator Wyden) for introducing the Charity Act and ask that the provision on Donor Advised Funds be expanded to authorize transfers from IRAs to fund life income charitable gifts as provided in The Legacy IRA Act (H.R. 1337) introduced by a number of the members of the House Ways & Means Committee.