



Charitable Giving Implications of SECURE and CARES Acts

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New Legislation

- CARES Act- Coronavirus Aid, Relief, and Economic Security Act, 3/27/2020
 - Unprecedented in size and scope, the legislation was the largest economic stimulus package in U.S. history.
- SECURE Act- Setting Every Community Up for Retirement Enhancement Act, 12/19/2019
 - The SECURE Act was drafted to assist in saving and investing for retirement. To that end, it contains a number of provisions to incentivize retirement planning, diversify the options available to savers, and increase access to tax-advantaged savings programs.

CARES Act \$300 Above the Line Deduction

- Qualifying gifts:
 - Non-itemizers
 - Cash gifts
 - Qualified public charities
 - No supporting orgs or donor advised funds
- Joint Committee on Taxation issued a publication on the CARES Act that contains the following footnote: 76 Sec. 62(f)(1). The \$300 limit applies to the tax-filing unit.
- “(22) CHARITABLE CONTRIBUTIONS.—In the case of taxable **years beginning in 2020**, the amount (not to exceed \$300) of qualified charitable contributions made by an eligible taxpayer during the taxable year .”

CARES Act Suspension of AGI Limitations in 2020

- Election to suspend the AGI limitations on charitable income tax deduction for qualified gifts
- Qualifying gifts
 - Cash gifts
 - Qualified public charities
 - No supporting orgs or donor advised funds
- Available for stacking
- Qualified gifts that exceed taxable income would carry forward
- No election available for appreciated asset gifts, 30% of AGI limit remains
- Charitable income tax deduction limitation for corporations increased from 10% to 25% of taxable income
- Deduction limitation for contributions of food inventory is increased from 15% to 25%

CARES Act Suspension of AGI Limitations

- From a tax planning perspective it may make sense NOT to make the election even if client makes qualified donations greater than 60% of their AGI
 - AGI of \$100k, \$20k in other deductions, taxable income of \$80k = tax due of \$13,464
 - If take election in year 1 - \$0 tax due and \$13,464 in year 2
 - If don't take election and deduct 60% of AGI (\$60,000) have a \$20,000 taxable income = \$2,209 tax due in year 1
 - Carry over \$20,000 of deduction to year 2 so now have a taxable income in year 2 of \$60,000 = \$9,064 tax due
 - \$2,209 + \$9,064 = \$11,273 in tax due over 2 years vs \$13,464 with election
- Loss of other deductions if take 100% charitable deduction

CARES Act Suspension of AGI Limitations

- Opportunity for transfers of more than \$100k from IRA to charity
 - In 2019, if taxpayer with \$200k AGI withdrew \$1 million from an IRA and gave it to charity would have an AGI of \$1.2 million and be able to deduct \$720k and would still have a taxable event for the remaining \$280k of IRA withdrawal. In 2020 could deduct the entire \$1 million due to election to suspend the 60% limit.
- Consider selling slightly appreciated assets to fund giving with cash if client is interested in utilizing the election
- Capital Gains Property Election still limited to 50% AGI
- Life Income Gifts?
 - CGA may qualify (Russell James says yes)
 - CRT doesn't qualify- 170(f)(2)
- S Corps and partnerships- each individual will make own election

SECURE Act- New Inherited IRA Distribution Rules

- Stretch IRA- pre-SECURE Act IRAs could be left to heirs and distributions stretched out over the heir's life
- SECURE Act replaced that with a 10-year limit for taking distributions for most
 - Account needs to be empty by December 31 of the tenth year after the year of the decedent's death or there is a 50% penalty on the balance
 - Exceptions for eligible designated beneficiaries
 - If there is a non-designated beneficiary (estate or charity) as of 9/30 in the year after the decedent's death, then the payout is 5 years (can avoid this result by making sure their share is paid out prior to the determination date of 9/30)
 - If decedent dies after their required beginning date, then can use their ghost life expectancy instead

SECURE Act- Charitable Remainder Trusts

- IRAs don't pay taxes on income and capital gains so account will grow while deferring taxes due
 - Distributions are all ordinary income
- CRTs are tax exempt so they can be funded with IRA assets and defer income tax due, mimicking the stretch IRA
 - Beneficiaries receive K-1's and will carry out the ordinary income to beneficiaries as distributions are received
- Client will need to create a charitable remainder trust and choose a trustee prior to death
- IRA beneficiary designation should name the CRT “ _____, Trustee of the ABC Charitable Remainder Unitrust, dated _____.”
- IRA is included in the decedent's estate but the estate also receives an estate tax deduction for the present value of the remainder interest

SECURE Act- Charitable Gift Annuities

- Charitable gift annuities are funded by a distribution to charity so also not subject to tax at the time of distribution to charity
 - Annuitants receive 1099's and annuity payments will most likely be 100% ordinary income
- CGA rate will be determined by the age of annuitants at the decedent's date of death
- Over 90% of charities that issue CGAs use the rates set annually by the American Council on Gift Annuities
- Client will need to establish a CGA agreement with the charity prior to death so that when charity receives the funds at death they know it is to be used for a CGA
- Beneficiary designation should name issuing charity
- IRA is included in the decedent's estate but the estate also receives an estate tax deduction for the amount to the CGA minus the present value of the annuity
- PLR 200230018

SECURE Act- IRA Payout Comparison

- The amount distributed from a CRT or CGA is calculated very differently
 - IRA RMD = account balance/life expectancy
 - CRT = Fixed percentage of assets distributed annually (generally 5-6%)
 - CGA = Fixed payout amount annually (rate based on age of annuitant at time of funding)
- IRA RMD table:

Age of Account Holder	Required Payout
72	3.67%
75	4.07%
80	4.95%
85	6.25%
90	8.27%
95	11.24%
100	15.71%

SECURE Act- \$1 million IRA Payout Comparison

- IRA RMD table:

Age of Account Holder	Required Payout
72	\$36,700
75	\$40,700
80	\$49,500
85	\$62,500
90	\$82,700
95	\$112,400
100	\$157,100

- CRT payout table:

Age of beneficiary	Payout
72	\$50,000
75	\$50,853
80	\$53,048
85	\$55,339
90	\$57,728
95	\$60,221
100	\$62,292

- Assumes 6.5% appreciation and .65% in fees

- CGA payout table:

Age of annuitant	Payout
72	\$49,000
75	\$49,000
80	\$49,000
85	\$49,000
90	\$49,000
95	\$49,000
100	\$49,000

- CGA rate for 72 year old is 4.9%

IRA Required Minimum Distributions

- No RMDs for 2020 (CARES Act)
 - Applies to any delayed 2019 RMDs
 - Applies to inherited IRAs
 - Notice 2020-51 gave until 8/31 to rollover RMDs already taken for 2020
- RMDs starting age changed from age 70 1/2 to 72 (SECURE Act)
- New life expectancy tables starting in 2021 resulting in RMDs declining between .3-.5% a year

IRA Qualified Charitable Distributions

- QCD rules remain the same
 - Minimum age did not change- remains at 70 1/2
 - Up to \$100k a year
 - Sent directly from IRA to charity
 - May not be as attractive for tax planning for non-itemizers with no RMDs in 2020
- No more cap on contributions to IRA after age 70 1/2 but contributions after age 70 1/2 are ineligible for QCD treatment (SECURE Act)
 - Can contribute to a 401(k) or Roth IRA without triggering this rule
 - If make any contributions to IRA after age 70 1/2 then the amount excluded from income for future QCDs is reduced by that amount

Low Interest Rate Environment

- ACGA rates were decreased as of 7/1/2020
- October 2020 7520 rate is .4%, down from a 2020 high of 2.2% in February
- Calculations that benefit from low interest rates:
 - Charitable lead trusts
 - Retained life estates
 - Tax free income of CGA
 - Pooled income funds
 - Gift of income interest in a life income vehicle