Using IRA Charitable Rollovers to Make Gifts to Charities

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AUTHORED ARTICLE | 10.6.2016

The following article was featured in the October 2016 edition of *Legacy*, the Vorys newsletter focused on wealth planning.

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IRA charitable rollovers, which first became available in 2006, were made permanent by federal legislation in late 2015. With an IRA charitable rollover, taxpayers get an annual exclusion from gross income for "qualified charitable distributions" from an IRA up to $100,000, and the distributions will count towards the taxpayer's required minimum distribution (RMD) for that year. Thus, in lieu of taking an RMD or other distribution from an IRA in a given year, a taxpayer can direct up to $100,000 from an IRA to pass directly to charity and doing so will be treated as a non-event for income tax purposes. So long as the aggregate distributions in a calendar year do not exceed $100,000, IRA charitable rollovers can be in the form of one distribution to one charity or multiple distributions to one or more charities.

The original provision enabling IRA charitable rollovers was set to expire on December 31, 2007, but Congress ultimately extended the provision on a year-to-year basis, usually in year-end tax extender legislation. Until IRA charitable rollovers were made permanent in 2015, taxpayers were always left wondering whether they would be able to benefit from an IRA charitable rollover and this made proper planning difficult. The fact that IRA charitable rollovers are now permanent eliminates the guessing game and enables taxpayers to redirect their RMDs (or other IRA assets) to a charity of their choice in an income-tax-favorable manner.

The tax benefit of an IRA charitable rollover is that the distribution from the IRA to the charity is "excluded" from gross income, just as if it was never received, and the distribution can count towards the taxpayer's RMD. Taxpayers have always been able to receive a distribution from their IRAs, include the distribution in gross income, make a corresponding contribution to a charity of their choice, and then take an income tax charitable deduction for part or all of the amount given

to charity (subject to certain percentage limitations and other applicable rules). However, doing so would risk a myriad of potential negative income tax implications associated with including the IRA distribution in gross income. For example, because such an IRA distribution would be included in a taxpayer's adjusted gross income (AGI) calculation, the taxpayer could potentially be phased out of various deductions and exemptions, be subject to higher tax on social security income and the net investment income tax, and potentially have higher Medicare Part B and prescription drug premiums. In addition, due to the limitations on deductibility of charitable contributions, taking the IRA distribution into income and then giving an equivalent amount to a charity can present a mismatch between the income attributable to the IRA distribution and the income tax charitable deduction available for the contribution. Excluding the IRA distribution from gross income in the first place alleviates all of these problems.

In order for an IRA charitable rollover to be considered a "qualified charitable distribution," the following requirements must be met:

- The amount of the aggregate distributions in a calendar year may not exceed $100,000.
- Each distribution must be from a traditional IRA or a Roth IRA. This means that distributions from 401(k) plans, 403(b) plans, pension plans or other retirement plans are not eligible.
- Each distribution must go directly from the IRA custodian to the charity and cannot be made first to the taxpayer.
- Each distribution must take place on or after the date the taxpayer reaches age 70 and ½.
- Each distribution must be made to a public charity and not a donor-advised fund, supporting organization or private foundation.
- Each distribution must have been includible in the taxpayer's gross income if it had been distributed directly to the taxpayer.
- The taxpayer must obtain written substantiation of the distribution from the recipient charity.
- The taxpayer may not receive goods or services from a charity in exchange (as a *quid pro quo*) for the distribution.

IRA charitable rollovers are a great way for a taxpayer to benefit a favorite charity without creating the issues associated with taking the retirement plan distribution into AGI. If you have any questions about IRA charitable rollovers or would like any advice relating to them, please do not hesitate to contact your Vorys attorney.