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Here we are some 20 months after the passage of the Legacy IRA Act, and questions remain. That law updated Section 408(d)(8) of the Internal Revenue Code to allow Qualified Charitable Distributions (QCD) from IRAs to fund charitable gift annuities and charitable remainder trusts. After all this time, there remains some ambiguity

Recap of the QCD/Life Income Gift Rules

Recall that the law allows an election to use a QCD from an IRA to fund a charitable gift annuity, charitable remainder unitrust, or charitable remainder annuity trust. It is a once-in-a-lifetime election and may only be funded up to \$53,000 (2024), adjusted annually for inflation. The economics of funding a charitable remainder trust with such a small amount means that the Legacy IRA is used almost exclusively for gift annuities.

All payments from gift annuities funded with a QCD are subject to ordinary income tax, with no exceptions. There is no income tax charitable deduction for such a gift; instead, the donor is not liable for income tax on the withdrawal from the IRA that would otherwise be taxable.

No deferred annuities are permissible. The only permissible beneficiaries of a CGA funded with a QCD are the donor and the donor's spouse. QCDs used for the purpose of making life income gifts must come from a traditional IRA or a Roth IRA. QCDs may not come from 401(k)s, 403(b)s, or other active qualified retirement plans.

The QCD to fund a life income gift can be used to fulfill the donor's required minimum distribution.

Life Income Gifts Funded from Spouses with Separate IRAs

The Legacy IRA may only benefit the IRA holder, his or her spouse, or a two-life gift to benefit both spouses. There is an open question as to whether each spouse may use their own IRAs in combination to fund a two-life gift annuity – with joint donors – to benefit each spouse. The text of the law is not explicit on this point, but the answer may be implied.

One clue may be that the law says a life income gift can be funded with “qualified charitable distributions.” The plural “distributions” suggests that more than one QCD to fund a gift annuity is permissible. If both spouses are over age 70½ and fund a two-life annuity simultaneously, such a gift might be permissible.

Such a reading of the statute turns on a single letter “s.” A more conservative approach would be to fund two separate annuities, each for the benefit of the donor and spouse, from their own IRAs. The net effect would be the same as funding a single two-life annuity funded with two distributions.

Limits on Outright QCDs and Life Income QCDs

Outright QCDs can be made each year subject to the limitation of \$105,000 (in 2024) to benefit a charitable organization. QCDs to fund life income gifts are limited to \$53,000, and for now, at least, it is only a once-in-a-lifetime opportunity. But here’s the question: Does a \$53,000 QCD for a gift annuity in 2024 reduce the amount available for an outright QCD to \$52,000? Or is the total limit for outright QCDs and QCDs to fund a gift annuity \$158,000?

The nonprofit and professional advisor community have nearly universally agreed that the limitation for QCDs to fund gift annuities reduces the amount available for outright QCDs dollar for dollar. That is certainly the conservative position to take. Until there is clarification on the permissible limits, the safest solution is to reduce the amount available for outright QCDs by the amount of any QCD used to fund a gift annuity.

Required Minimum Distributions and QCDs

The interplay between Required Minimum Distributions and QCDs in the Legacy IRA legislation is not in question, but it does deserve some attention. IRA contributions are not subject to tax on funding. Capital gain realized, dividends, and interest are not taxable, so long as they are realized in the IRA.

Alas, all good things must come to an end. Once an IRA owner reaches age 73, they must begin taking withdrawals from their IRA. These withdrawals are called Required Minimum Distributions (RMDs). These required withdrawals are calculated by dividing the year-end value of the IRA by the distribution period value that matches the plan owner’s age. The distribution period is based on the plan owner’s life expectancy. A 73-year-old divides their IRA balance by 27.4 years. A 90-year-old

divides their IRA balance by 12.2 years. The older the plan owner, the higher the amount of the required minimum distribution. Clearly the underlying objective of the federal government is to reduce the balance in the IRA as much as possible; it is untaxed income that ordinarily becomes taxable upon withdrawal.

As a plan owner ages, their income increases because of the required minimum distribution. So, what's the problem? Who doesn't want more income? Medicare premiums vary depending on a retiree's income. In 2024, the annual premium for Medicare Part B is \$2,096 for those with incomes of less than \$103,000. Premiums can be as high as \$6,708 a year for those with incomes of \$500,000 or above. Reducing the RMD can generate significant savings on Medicare.

A qualified charitable distribution can fulfill some, or potentially all, of the RMD. An outright QCD and a QCD for a life income gift satisfy the RMD dollar for dollar. For example, if a donor has an RMD of \$90,000, a QCD of \$90,000 would satisfy the RMD and not trigger any income to the donor. Not only does the QCD save income taxes, but it also saves on Medicare premiums.

Conclusion

The charitable community welcomes clarification on the issues raised in this article. Nonetheless, the QCD, whether outright or for a life income gift, is a powerful tool to make charitable gifts with significant tax savings for the donor.

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