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It's clear – even to Congress – that donors and charities have been very pleased with the temporary IRA charitable rollover provision contained in the Philanthropy Protection Act of 2006. Although the IRA charitable rollover expired at the end of December 2014, the gift planning community is working hard to convince lawmakers to continue, and ideally to expand and make permanent, the tax incentives for using IRAs to make charitable gifts during life.

Regardless of whether or when this goal is achieved, it will remain important to acquaint your supporters with the advantages of using IRAs and other retirement plan assets to make charitable gifts upon death.

A Typical IRA is an IRD Asset, and that's a *Good* Thing!

Quite often a person who has died was the owner or beneficiary of something which, had the person remained alive, would have been a source of payments that would have been taxed as ordinary income. If upon death others then become entitled to receive such previously untaxed amounts, those payments constitute "income in respect of a decedent," or IRD for short. Most distributions from an IRA made after the IRA owner has died are common examples of IRD. (The only exceptions are distributions from a Roth IRA or distributions attributable to contributions of after-tax dollars made by the decedent to some other type of IRA.)

The good news for charities is that by virtue of their tax-exempt status, no income tax will be due on any IRD they receive. This means that if a donor's estate plan calls for benefiting both individuals and charities upon death, it is most efficient from a tax standpoint to draw upon IRD assets in making charitable gifts and to earmark other assets for individuals. Not all donors are aware of this fact, so charities need to keep up, and perhaps even step up, their efforts to spread the word.

An additional feature that distributions of IRD to charity share with other testamentary charitable gifts is deductibility of the distributions for estate tax purposes. Nevertheless, given the likelihood that fewer and fewer estates will be subject to estate tax in the years to come, it is the income tax aspects of distributing IRD to charity that offer tax savings for most heirs.

Other Members of the IRD Family

The closest cousins to IRAs are qualified retirement plans, such as 401(k)s and 403(b)s. More distant kin include certain U.S. savings bonds and certain commercial annuity contracts. "Certain" applies because some savings bonds pay interest that was taxed to the decedent as soon as it was received by him or her, and some annuity contracts do not have any residual value available to benefit someone else once the donor has died. However, if a commercial annuity has residual value after the donor's death, such an annuity is considered an IRD asset.

Relative Simplicity as a Further Selling Point

A standard bequest involves the formality and expense of drafting and executing a will (or a trust agreement, in the case of a testamentary charitable distribution from a revocable living trust). By contrast, directing that assets in an IRA go to charity upon the death of the IRA owner involves merely completing a beneficiary designation form and filing it with the IRA custodian. The process is essentially the same with respect to qualified retirement plans. Moreover, whenever a change might need to be made, the same process can be followed, whereas with a will or a living trust agreement any change entails following a more complex process.

Usually, a charity is designated to receive a percentage of the assets remaining in the IRA when the donor dies. While it is also possible to designate a particular sum (provided the IRA continues to hold at least that amount by the time the donor dies), estate planning lawyers generally advise that the sum be expressed as a fraction, the numerator of which is the sum itself and the denominator of which is the total value of the IRA.

Even with a commercial annuity contract, designating a charity as the beneficiary of some or all of whatever value may remain in the contract upon the death of the donor is usually just a matter of completing a beneficiary designation form and filing it with the insurance company. In the case of a savings bond, however, the donor will need to work through the Treasury Department or a bank to arrange for a specific charity to be named on the bond itself as the subsequent owner of the bond upon the death of the donor.

Despite all of the forgoing, there can be times when it is advisable for the donor's estate to be the recipient of IRD. Normally, this will result in the IRD being taxable to the estate. Fortunately, it is possible for a donor's will to direct that the

administrator of the estate draw first on IRD assets in making any charitable bequests. Such language will generally allow for the IRD to be recognized by the charitable beneficiaries, rather than by the estate.

In short, while IRA beneficiary designations and various other testamentary gifts of IRD assets are fairly easy to arrange, a donor should – as always – be encouraged to consult with his or her advisors regarding the appropriateness of a contemplated charitable gift in terms of the donor's overall estate plan.

Getting Fancy

Can IRD assets be used to make a testamentary gift that provides life income for surviving loved ones? Absolutely. Numerous IRS private letter rulings address the details associated with funding charitable remainder trusts and gift annuities with distributions from IRAs, and many of the same considerations will apply to other IRD assets as well.

Conclusion

Much attention has been paid to the temporary IRA charitable rollover that became available in August 2006 as part of the Philanthropy Protection Act of 2006. While this excellent giving option may or may not persevere beyond its current expiration date, IRAs and other IRD assets will continue to be excellent sources of funds for *testamentary* gifts to your charity. You will do well to get this message out to your supporters early and often.