

ESTATE PLANNING TAXATION

NEW LAW REINSTATES IRA CHARITABLE ROLLOVERS FOR 2010 AND 2011

by Judy Fertel Layne
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Shortly after midnight on December 17, 2010, Congress announced the passage of The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Act") which provides tax benefits for both individuals and corporations. Among the benefits for individuals is the extension of the Individual Retirement Account Charitable Rollover, a tax incentive which was first enacted as part of the Pension Protection Act of 2006, but expired at the end of 2009.

Any individual over the age of 70 1/2 who owns an individual retirement account ("IRA") must withdraw a "required minimum distribution" from his or her IRA each year. The required amount is calculated based on the individual's life expectancy and the total amount the individual holds in IRAs and other retirement accounts. The individual must recognize the amount withdrawn as income in the year the withdrawal is made. The IRA Charitable Rollover permits a taxpayer to make a direct transfer from his or her IRA to a public charity. As a result of the charitable transfer, the taxpayer does not have to recognize the amount transferred to charity as income, yet the amount transferred to charity will satisfy (in whole or in part) the taxpayer's required minimum distribution.

There are limitations, however, so taxpayers need to follow the rules carefully to achieve the desired tax treatment. For example, a taxpayer can donate up to \$100,000 each year without having to treat the amount donated as taxable income. Any amount over the \$100,000 limitation may be eligible for a charitable deduction, but the taxpayer must recognize such amount as taxable income. In addition, the IRA rollover provision applies only to traditional and Roth IRAs. It does not apply to 401(k)s, 403(b)s SIMPLE plan accounts, SEP plan accounts, or any other retirement plan account. Like other charitable contributions, the taxpayer should make sure to get a receipt from the charity receiving the contribution to evidence the taxpayer's gift.

The IRA Charitable Rollover provision of the 2010 Act only applies to charitable rollovers made in 2010 and 2011. Thus, for taxpayers who have yet to take their 2010 required minimum distribution, there is still time to make a charitable rollover in lieu of making a taxable withdrawal. Indeed, for 2010, a taxpayer can make a qualified charitable transfer through January 31, 2011 which can be treated as a charitable rollover for 2010.

Please contact a Dickinson Wright trust and estate lawyer with your questions about IRA Charitable Rollovers and charitable and estate planning matters.



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The IRS has promulgated regulations in Circular 230 that regulate written communications involving federal tax matters between attorneys and their clients. According to the IRS, such communications are either opinions or "other written communications". If a communication is not intended to be an opinion, the writing must so state. Therefore, we must advise that "this written communication which discusses federal tax matters is not an opinion, and is not written to be relied upon to avoid any tax penalty." Please contact us if you have any questions concerning Circular 230 or any tax planning, implications or consequences relating to your estate plan.