

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

Charitable Contributions From IRAs Are Back

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On December 17th, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 that reinstated the tax break for charitable contributions made directly from a person's Individual Retirement Account ("IRA") to a charity. This tax break has expired at the end of 2009 but has been reinstated for 2010. Since the legislation was passed so late in 2010, a special provision in the law states that any contribution made through January 31, 2011 will count for the 2010 tax year.

A person who is over the age of 70 ½ can exclude from taxable income any charitable contributions of up to \$100,000 that are made directly from an IRA. This law that initially took effect for the 2006 tax year, will be in effect through the end of 2011.

Taxpayers who will benefit most are:

- a. Those taxpayers who do not need their required minimum distributions – making the donation will not be counted as taxable income.
- b. Those taxpayers who do not itemize by taking the standard deduction. This happens most often with taxpayers who do not have a mortgage. These taxpayers are well advised to make all charitable contributions from their IRAs.
- c. Taxpayers who are itemizing and taking the 2% miscellaneous deductions, the 7.5% medical expenses deduction or the 10% nonbusiness casualty loss. These are based on adjusted gross income. Since the charitable contribution will not count as income, these limitations do not apply.
- d. Social Security recipients. Since the IRA distributions will not be included in AGI, they are not included in the calculation as to the portion of Social Security deemed taxable (ie, total exclusion if modified AGI is less than \$32,000 MFJ or \$25,000 single or HOH, 15% exclusion if modified AGI is over \$44,000 MFJ or \$34,000 HOH or single).
- e. Taxpayers who have exceeded the 50% AGI limitation on charitable gifts

According to the National Committee on Planned Giving, the median amount of a gift from an IRA was \$5,000. The average amount was \$17,634. The most common amount given was \$1,000. Universities and colleges received 69% of these contributions.

IRS Notice 2007-7 states that it is permissible for the IRA owner to physically receive the check from the IRA custodian as long as the check is made payable to the charity. This will be considered a direct trustee-to-trustee transfer for purposes of the statute. This is the preferred method for these distributions so that it is clear to the charity who is the donor. When doing so, the donor should make sure that receipt specifically mentions that it is a charitable IRA rollover and not simply a charitable donation. The burden is on the charity, and not the IRA custodian, to make sure proper documentation is issued.

Each spouse can make a \$100,000 contribution.

The \$100,000 amount is an aggregate amount, so the contribution can be made from more than one IRA.

Contributions can be made from SEP or SIMPLE IRAs as long as they are not “ongoing”. This has been interpreted as meaning that contributions are no longer being made by employer or employee to the SEP or SIMPLE even though they may continue to exist.

The beneficiary of an inherited IRA (ie, where the IRA owner has died) can make a qualifying charitable contribution as long as the beneficiary is over the age of 70 ½.

A charitable IRA contribution can be applied to satisfy a pre-existing pledge to a charity.

Certain types of charities or mechanisms are excluded from this tax break. Donor advised funds, charitable lead trusts and charitable remainder trusts do not qualify.

**“Those Who Plan Ahead Win.
Those Who Don’t Plan Ahead Lose.”**

This article is not intended as legal advice. It is basic information. I would recommend that you call Attorney Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Timothy P. Crawford can be reached toll-free at 1-888-634-6675. When you call in, please mention the fact that you have read this article.

*Attorney Timothy P. Crawford is a Board Certified Elder Law Attorney(CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as

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**Timothy P. Crawford was invited to join the Council of Advanced Practitioners of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. The Council of Advanced Practitioners (CAP) is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated the top in the nation by Martindale Hubbell. A Service that provides an independent rating of the quality of attorneys.

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“A majority of text has come from an article prepared by Attorney Thomas J. Murphy, friend of Attorney Timothy P. Crawford, is used here with permission.”