Patterson Belknap Webb & Tyler LLP

Tax-Exempt Organizations Alert January 2013

Charitable Giving Under the New Tax Law:
A Unique (But Brief) Opportunity for IRA Rollovers and Other Highlights

The American Taxpayer Relief Act of 2012 enacted in Washington last week creates a unique opportunity for charitable giving. Individuals with IRAs who have attained age 70½ may make a tax-free rollover to charity of up to $200,000, if they act during January 2013.

Here's how it works. The new law restores the ability of an individual who has attained age 70½ to make a tax-free IRA distribution (commonly referred to as a "rollover") to charity of up to $100,000 during 2013. And if the individual acts during January 2013, he or she can rollover an additional $100,000 and have it treated as if it was rolled over in 2012 (a year in which the IRA charitable rollover had temporarily expired until the enactment of the new law). In addition, an individual who took a personal IRA distribution during December 2012 may be able to treat up to $100,000 of the distribution as a tax-free 2012 distribution to charity - to the extent the individual transfers up to $100,000 in cash to charity during January 2013. Therefore, individuals looking to "double up" on IRA charitable rollovers - and contribute up to $200,000 of IRA assets tax free to one or more charities - can do so if they act quickly.

There continue to be important limitations on IRA rollovers to charity. The donee organization cannot be a supporting organization or a donor-advised fund, and as a general rule, a private foundation is eligible for an IRA rollover only if it is an operating foundation. The individual cannot receive any *quid pro quo* or consideration for the distribution, and he or she must obtain written substantiation from the donee organization that it received the distribution and provided no goods or services in consideration for it.

Although there was a great deal of debate in Washington about whether the new law would impose a new cap on the charitable deduction, Congress ultimately did not pursue that option. Instead, the law revives a cutback in the deduction -- the so-called "haircut" on itemized deductions, also known as the "Pease limitation" -- that had been phased out starting in 2006. The actual effect of restoring the full Pease limitation remains to be seen, but many donors may be less daunted in their charitable giving if their deductions are reduced by an old but familiar "haircut" formula than by any of the new concepts that were circulating in Washington in December.

One well-known aspect of the legislation - the increase in marginal tax rates for individual taxpayers earning over $400,000 and married couples earning over $450,000 - means that the tax savings generated by charitable gifts could now be greater for taxpayers in the top bracket than in 2012, when tax rates were lower. In other words, higher tax rates could mean that gifts to charity for top-rate taxpayers will reduce taxes more this year than in 2012. However, the restoration of the "haircut" on itemized deductions could offset some or all of the tax savings that would otherwise be attributable to higher marginal rates. The "haircut" reduces the total amount of itemized deductions by 3% of the amount by which the taxpayer's adjusted gross income exceeds an "applicable threshold" (but the amount of itemized deductions may not be reduced by more than 80%). The "applicable threshold" is $250,000 for individual taxpayers and $300,000 for married couples. Each donor's situation should be reviewed carefully by his or her tax advisors.

The new law also extends, through the end of 2013, the special rule allowing the deduction for certain conservation easements to offset up to 50% of the donor's contribution base (generally speaking, his or her adjusted gross income) for the tax year (rather than the general limitation of 30%), with a 15-year carryforward of amounts over the 50% limit.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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