



Fiscal Cliff Legislation Restores Tax-Free IRA Distributions to Charity; Retroactive Benefit Expires January 31, 2013

Client Advisories

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As part of the American Taxpayer Relief Act of 2012 (H.R. 8), a.k.a. the "fiscal cliff legislation," Congress restored for 2013, and made retroactive to 2012, a provision that enables individual IRA holders over the age of 70½ to make tax-free IRA distributions directly to charity. The maximum amount of tax-free distributions is \$100,000 per year. Charitable donations made in this way cannot also qualify for a charitable deduction.

Because the law was not enacted until 2013, a special retroactive feature allows the taxpayer who received an IRA distribution in December 2012 to count that distribution (or a portion thereof) as a 2012 IRA charitable rollover, to the extent paid to an eligible charity by **January 31, 2013**. The IRS is expected to issue more detailed rules shortly. In addition, the law permits donors to make new IRA distributions directly to eligible charities **by the same deadline** and elect to have such distributions treated as qualified 2012 distributions. This would especially benefit anyone who failed to take the required minimum distribution for 2012 by the end of that tax year, or who wants to give more than \$100,000 to charity - up to \$200,000 - by making a 2012 distribution by January 31 in addition to a 2013 transfer.

This law is a significant benefit for high-income individuals facing the deduction and exemption limitation rules that went back into effect on January 1, 2013 ([see previous advisory on new tax rules in H.R. 8](#)). It also benefits anyone whose 2013 required minimum distributions will push them over the thresholds for the new Medicare tax and highest income tax bracket of 39.6%.

By way of example, an IRA holder required to take a minimum distribution, and who desires to make a cash contribution to charity, normally would receive the required minimum distribution, write a check for the contribution, and take an itemized deduction. But under new rules that took effect on January 1, 2013, total itemized deductions and personal exemptions are reduced for individuals with adjusted gross income more than \$250,000 if single and \$300,000 for married taxpayers filing jointly. In addition, taxpayers face a 3.8% Medicare

tax on investment income if adjusted gross income is higher than \$200,000 for a single taxpayer or \$250,000 if filing jointly.

This new IRA provision allows an individual to direct all or part of an IRA distribution to a qualifying charity, thereby lowering the amount that would otherwise be taxable. The gift lowers the taxpayer's adjusted gross income and taxable income, and thereby might shield the donor from Medicare tax, higher income tax rates and deduction/exemption limitations. The distribution would also not be subject to the new itemized deduction limitation rules that would apply to a normal cash contribution. Any transfer to charity counts toward satisfying the required minimum distribution, which the taxpayer otherwise would need to report as ordinary income.

A taxpayer should carefully review the benefits of this strategy with a tax advisor before directing a distribution to charity.

If you have questions or would like to discuss this advisory or a related matter, please contact Kenneth Ahl, Partner in Archer's Tax Law Group, at kahl@archerlaw.com or (215) 246-3132 or any member of **Archer's Tax Law Group**.

For a previous Archer advisory on a new Roth account conversion opportunity in the fiscal cliff legislation, [click here](#).

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