# IRA UPDATE: JANUARY 2013

**Qualified Charitable Distribution (QCD)**

A Qualified Charitable Distribution or QCD allows an IRA owner who is over the age of 70 ½ to make a charitable contribution up to $100,000 directly to a qualified charity using IRA funds and have that contribution satisfy their Required Minimum Distribution (RMD) for that year. The distribution must be made directly to the charity. If the IRA owner takes the distribution payable to him/herself, they would realize the income on their own tax return. In this case they would be allowed to take the applicable charitable deduction however in many cases, especially for higher income taxpayers, the charitable deduction may be limited as might other tax deductions due to higher thresholds. With the QCD, the funds are transferred directly to the charity so the IRA owner does not realize the income on their return thus the QCD is much more tax efficient.

There are several key points to understand about QCDs:

- The limit is up to $100,000 per person. A married couple could affectively give $200,000.
- Applies to IRAs, Roth IRAs, inactive SEP and SIMPLE IRAs; it does not apply to distributions from any employer plan. If a plan owner wishes to do a QCD, an IRA rollover may help accomplish that objective.
- Roth IRAs are a poor choice to use for a QCD because they would normally be tax free and have no RMDs.
- The distribution can (partially) satisfy the IRA owner's Required Minimum Distribution depending upon the amount.
- The distribution must be made directly to the charity from the IRA. A check made payable to the charity from the IRA is acceptable.
- The income from the distribution is not included on the taxpayer's return thus their AGI is less than what it would be if the distribution were included.
- A lower AGI means that more tax deductions and credits may be available (lower thresholds due to lower income) to meet.
- A lower AGI may help avoid the 0.9% Medicare tax and the 3.8% surtax on net investment income.
- No charitable deduction is allowed if the QCD is used because the distribution is not counted as income.
- QCDs are made only from pre-tax IRA funds, not basis. If the IRA owner has after-tax basis in their IRA, the pre-tax funds are deemed to come out first leaving behind basis. This is an exception to the pro-rata (Cream-in-the-coffee) distribution rules for IRAs.
- The charity must be a public charity; grant making foundations, donor advised funds, or charitable gift annuities to not qualify nor do split interest gifts.
- When a QCD is made, the IRA custodian will still generate a 1099-R; the taxpayer must take appropriate steps on the tax return to avoid the inclusion of income.
- IRA owner's may not receive anything in exchange for their donation.

QCDs have been extended retroactively to 2012 as part of the American Taxpayer Relief Act of 2013. QCD's have expired and been reinstated for several years now and most likely will continue to be a viable tax planning strategy for those who are subject to Required Minimum Distributions and are charitably inclined. With the top marginal rate now "permanently" set at 39.6% plus the 3.8% surtax on net investment income, a QCD strategy should be considered for especially for those in high tax brackets.

Check out this great article on Qualified Charitable Deductions by Robert Powell in which I was quoted: http://www.marketwatch.com/story/donating-retirement-assets-to-charities-2013-01-08?pagenumber=1

**Important IRA Rulings for 2012**

In *Charles Grant Beech et ux. v. Commissioner, T.C. Summ. Op. 2012-74; No. 1948-11S, 7/26/12*, a non-spouse beneficiary, the decedents daughter botched an inherited IRA by not doing a trustee-to-trustee transfer and the whole inherited IRA was taxable all in one year. Remember, a non-spouse beneficiary CANNOT do a (60 day) Rollover; funds must only be moved via direct (trustee-to-trustee) transfer.

In *Herring v. Campbell, Administrator of Marathon Oil Company Thrift Plan, U. S. Court of Appeals for the Fifth Circuit, 8/7/12*, a $300,000 pension was not inherited by the intended beneficiaries. The decedent, John Hunter named his spouse, Joyce and the primary beneficiary of his pension plan but did not name any contingent beneficiaries. Joyce predeceased John and he never updated his beneficiary form. The plan administrator followed the rules of the plan and eventually the funds were distributed to Mr. Hunter's living siblings, not his "beloved stepsons" who inherited his estate through the Will. Unfortunately for the stepsons, a Will does not cover retirement plans, the beneficiary form does.

In *Seeling, U.S. Bankruptcy Court, District of Massachusetts, Western Division, Case No. 11-30957, 5/24/12*, the taxpayer received a favorable ruling protecting her inherited IRA from bankruptcy. In *Clark, 2012, DC WI, 109 AFTR 2d 2012-733, 1/5/12*, another bankruptcy involving an inherited IRA, the bankruptcy court ruled in favor of the creditors initially however a district court later overturned the ruling in favor of the debtor. More and more of these inherited IRA bankruptcy cases seem to be coming up and it appears a precedence is being set in many states in favor of debtors.

As always if any of this applies to you, give me a call to discuss your situation.

Sincerely,

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