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Window of Opportunity Closing on Righteous IRA Distributions

The Pension Protection Act of 2006 (PPA) opened a special window of opportunity for individuals who are 70½ or older to make a charitable contribution. If made **prior to December 31 of 2007**, certain IRA owners can distribute up to \$100,000 directly from their IRA to a qualifying charity without having to claim it as a taxable distribution during the year the contribution is made.

For IRA owners who must take a required minimum distribution each year but prefer not to add those amounts to their taxable income, this limited provision will enable them to arrange for some or all of the payment to be made directly to the charity and only include the portion they keep for themselves as taxable income. Of course, since the distribution is not included in taxable income, the donor cannot claim a charitable contributions deduction against their other income.

There are seven requirements for recognition as a qualified charitable distribution:

1. The donor must be 70 ½ years of age or older on the gift date, and the tax-free distribution cannot exceed \$100,000.
2. The Act only applies to traditional and Roth IRAs. Other retirement plans, such as 401 (k)s, SEPs and SIMPLE plans are ineligible.
3. The distribution must be made directly from the IRA to the qualifying charity. If the check is made out to the owner of the IRA and endorsed over to the charity, it must be claimed as taxable income.
4. The recipient organization must be a public charity or conduit private foundation. The recipient may not be a donor-advised fund or Sec. 509 (a)(3) supporting organization.
5. A distribution qualifies only if the payment would otherwise qualify as a charitable income tax deduction. Happily, the 50% adjusted gross income (AGI) limitation does not apply.
6. A distribution qualifies if it is otherwise considered a taxable distribution.

7. The donor must receive notification from the organization that the distribution would normally qualify as a charitable income tax deduction and nothing was given in return. Failure to receive this type of notification may make the distribution taxable. In addition, if this notification is not available and if the distribution is considered taxable income, the IRA owner may also lose out on claiming it as a charitable income tax deduction.

To Give or Not to Give?

There are at least four groups of IRA owners over 70½ who would benefit from taking advantage of this brief opportunity for tax-wise charitable giving:

1. Individuals who do not need the required minimum distribution to support their lifestyle. A charitable IRA rollover distribution will satisfy the minimum distribution requirements for 2007 without creating taxable income, resulting in a win-win situation.

2. Individuals who will be making or have already made a charitable donation of 50 percent of their adjusted gross income (AGI) - the maximum amount allowed for charitable tax deduction purposes – and who wish to give more. A charitable rollover IRA distribution made directly to a charity is not limited to the 50 percent AGI rule because the individual does not receive a charitable income tax deduction for making the IRA distribution to the charity.

3. Individuals who choose not to itemize their income tax deductions. Since no itemization is required for this type of IRA distribution, an IRA owner may still use the simple tax return form.

4. Individuals who just want to give to their favorite tax-exempt organization and have a traditional or Roth IRA from which to direct the gift.

The window of opportunity is closing as we approach the end of 2007. There is legislation currently under discussion, known as the Public Good IRA Rollover Act of 2007 (S.819), which would permanently extend the charitable IRA rollover and also extend it to:

1. Include donor-advised funds, supporting organizations and foundations;
2. Allow gifts to be made by people age 59 ½ and older; and
3. Allow gifts of more than \$100,000.

If the charitable IRA rollover distribution appeals to you, please consult with the Firm or with your CPA prior to making the decision to take advantage of this special charitable contribution provision. But act soon, before the window closes for 2007!