
No IRA Recontributions IRS Says

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The IRS has clarified that "required minimum distributions from an IRA taken by a taxpayer during 2010 cannot be rolled over to an IRA." This position prevents taxpayers who want to return RMDs they took from their IRAs during 2010 and then redirect them to charity via a qualified charitable distribution.

By Marc D. Hoffman

Last year many charitably inclined IRA account holders were waiting patiently to see if Congress would extend the charitable IRA rollover provisions that expired at the end of 2009 for the 2010 tax year. With the end of the tax year looming and a legislative stalemate possible, many IRA account holders went ahead and took their required minimum distributions for the 2010 tax year.

On Thursday, December 16, Congress passed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act Of 2010 and with it a retroactive extension of the charitable IRA rollover provisions into the entire 2010 tax year. However, the Act was silent with respect to taxpayers who made RMDs and would like to recontribute them for the purpose of making qualified distributions to one or more charities in satisfaction of their required RMD amount.

According to a January 5 statement by IRS spokesman Eric Smith, and to the chagrin of donors and charities, the answer is no.

"Required minimum distributions (RMD) from an IRA received by a taxpayer cannot be rolled over to an IRA. As noted on page 24 of the 2009 IRS Publication 590, Individual Retirement Arrangements, "Amounts that must be distributed during a particular year under the required distribution rules are not eligible for rollover treatment." Moreover, there's no provision in the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act Of 2010, nor any hint in the Committee report for such RMD recontribution."

While this position will leave many donors angry, the Act does allow qualified charitable distributions from IRAs made in January 2011 to be reported by donors as if made on December 31, 2010.

The PGDC spoke with Lewisville, Texas-based charitable, financial and estate planning consultant Ronnie C. McClure, CPA, Ph.D. regarding his interpretation of the Act's provisions and IRS announcement to several common fact patterns:

"(1) A taxpayer who took a required minimum distribution in 2010 cannot now write a check in January of 2011 to a charitable organization for the amount of that RMD (assume \$100,000) and thereby make the amount of that 2010 RMD non-taxable for 2010. The "charitable rollover" must be a direct transfer from the IRA custodian to the charity.

(2) A taxpayer who was required to take an RMD (assume \$100,000) in 2010, but failed to do so may request a qualified charitable distribution from the IRA custodian payable directly to a charitable organization in January of 2011, treat it as a qualified charitable distribution in 2010, and (based on the language of the Technical Explanation) have that distribution

treated as a non-taxable RMD for 2010.

(3) A taxpayer who took a \$100,000 taxable RMD in 2010 may now request a \$100,000 qualified charitable distribution from the IRA custodian payable directly to a charitable organization in January of 2011, and treat it as an additional 2010 IRA distribution that is not taxable in his 2010 return. This means that the taxpayer took two \$100,000 distributions from his IRA applicable to 2010, the first of which was taken during 2010 and was taxable, and the second of which was taken in January of 2011 as qualified charitable distribution for 2010. This additional distribution for 2010 (taken in 2011) does not relieve the taxpayer of taking an RMD (assume \$100,000) in 2011. The taxpayer may, however, take his \$100,000 RMD for 2011 as a qualified charitable distribution, and it will not be taxable in his 2011 tax return. Thus, the taxpayer has taken one \$100,000 taxable distribution from his IRA and two \$100,000 qualified charitable distributions."

Provided by Planned Giving Design Center, LLC
10820 Independence Pointe Parkway
Suite E
Matthews, NC 28105

Phone: 1 704-849-0731
Fax: 1 770-456-5239
Email: support@pgdc.com

Ann Casey

acasey@madisoncommunityfoundation.org