

Tax-free transfers from IRAs to CRTs and CGAs

By Christopher R. Hoyt, JD



Amidst the evolving landscape of charitable giving options, a new opportunity has emerged for individuals aged 70½ or older to support causes close to their hearts. For the last 15 years, these individuals have been able to capitalize on the tax benefits of charitable donations made directly from their individual retirement accounts—effectively transforming IRAs into personal philanthropic vehicles similar to a private foundation or donor advised fund (provided their yearly contributions stay below \$100,000). A recent development, however, offers a new avenue for experienced donors: The ability to make gifts of up to \$53,000 (in 2024) from their IRAs to establish a charitable gift annuity or charitable remainder trust, an arrangement in which donors can retain income from donated funds while ensuring future support for their chosen causes.

For more than 15 years, individuals over the age of 70½ have been able to make tax-favored charitable gifts directly from their individual retirement accounts (IRAs). Charitable IRA distributions are excluded from their taxable income. For many donors, this law effectively allows them to use their IRAs as their charitable foundation. As long as they give away less than \$100,000 per year, they don't need to have a private foundation or a donor advised fund. In most situations, their IRA can act as their philanthropic giving vehicle.

Now there is a new charitable giving option available to these IRA owners. They can make a once-in-a-lifetime deferred gift of up to \$53,000 directly from an IRA to a charity for a charitable gift annuity (CGA) or to a charitable remainder trust (CRT).¹ The CGA or CRT will then make payments to the IRA owners for the rest of their lives.

The distribution from the IRA will be excluded from the IRA owner's taxable income as a qualified charitable distribution (QCD).² Individuals aged 73 or older (who must receive required minimum distributions [RMDs] from their IRAs) can use this QCD to satisfy their RMD for that year.³

The CGA or the CRT must be funded exclusively with such IRA funds; no other assets can be commingled. The beneficiary of the CGA or CRT can only be the IRA owner and/or that person's spouse, and the interest must be non-assignable. All distributions that they receive from the CGA or CRT will be taxed as ordinary income, with no chance of capital gain treatment.

The \$53,000 limit means that a CRT will generally not be economically viable. The annual administrative costs (tax return,

etc.) would consume too much of the CRT's assets. One exception might exist for a married couple when each spouse contributes \$53,000 to a single CRT. Some charities are willing to administer a CRT for a minimum \$100,000 contribution.

Except for this situation, as a practical matter, the immediate benefit of this law will be limited to CGAs. Such annuities are offered by many universities and other large charities, and many offer them for a minimum payment of just \$10,000.

CGAs pay a lower rate than commercial annuities, since a portion of the acquisition cost is a charitable gift.⁴ For IRA owners who are primarily looking for steady income, they will usually be better off acquiring a conventional annuity inside their IRA that can generate larger, steady payments to them. The new IRA-for-CGA law is, therefore, best suited for an IRA owner

whose primary intent is to support a specific charity, but who also likes the idea of receiving a lifetime stream of steady payments.

Checklist for QCDs - Outright and Deferred

To be a qualified charitable distribution, the charitable gift must generally meet all of the requirements to qualify for a traditional charitable income tax deduction. For an outright gift, the entire IRA distribution would have to qualify for the deduction.⁵ For a deferred gift, the value of the remainder interest would have to qualify for a charitable income tax deduction.⁶ If all of the requirements are met, then the entire IRA distribution (including the portion that is used for a lifetime annuity) qualifies as a QCD and will be excluded from the taxpayer's income.



The responsibility for reporting the favorable tax treatment falls on the IRA owner, rather than on the IRA administrator. The Form 1099-R that is issued by an IRA administrator generally classifies all IRA distributions as taxable distributions, including the distributions that were made to eligible charities. On the Form 1040 income tax return, the IRA owner first reports the total amount of the distribution, and then excludes the QCD from taxable income by making the notation "QCD."

When the QCD is excluded from taxable income, the IRA owner cannot claim an itemized charitable income tax deduction for the contribution.⁷ Usually, the charitable IRA exclusion from a QCD provides greater tax benefits than an itemized charitable deduction. By reducing gross income, a senior might be able to reduce Medicare B and Medicare D premiums or keep a larger portion of social security benefits exempt from income tax.

Requirements

All of the following requirements must be met to qualify for the QCD exclusion:

- **The IRA owner must be over age 70½.**⁸
- **Only IRAs are eligible to make QCDs⁹ (not 401(k), 403(b), and not ongoing SIMPLE-IRAs or ongoing SEP IRAs).**¹⁰ A SEP IRA or a SIMPLE IRA is an ongoing arrangement if a contribution was made to it during the same year as the charitable distribution.
- **To be a QCD, the IRA distribution must consist of fully taxable income.**¹¹ If an IRA holds non-deductible contributions, the QCD is deemed to come first from taxable income.
- **The distribution must be made directly to an eligible charity for either an outright gift or for a CGA deferred gift, or to a trustee of a CRAT or CRUT for a deferred gift.**¹² This requirement is generally met if the check issued from the IRA was payable to the charity.
- **Most charities are eligible to receive QCDs, but a few are not eligible.** Most public charities are eligible to receive QCDs, as well as private operating foundations.¹³ However, neither a donor advised fund nor a Section 509(a)(3) supporting organization (SO) is eligible to receive a QCD.¹⁴ Grant-making private foundations are also generally excluded.
- **The maximum annual exclusion for QCDs in 2024 is \$105,000**¹⁵ (though in the case of a QCD to a CRT or for a CGA, there is a maximum once-in-a-lifetime exclusion of just \$53,000¹⁶). Both thresholds are indexed for inflation.¹⁷
- **The payment to the charity or to the CRT would have otherwise qualified for a charitable income tax deduction.**¹⁸
- **The IRA owner cannot receive any financial benefit from the QCD that would have reduced a charitable income tax deduction**¹⁹ (except, in the case of deferred gifts, for the projected present value of the CGA payments or CRT payments).²⁰ Thus, the IRA owner



cannot receive a meal at a fund-raising dinner or use the IRA distribution to pay for a purchase at a charitable auction.

- **Before filing the income tax return for the year, the IRA owner must receive a contemporary written acknowledgment (CWA) from the charity.** The CWA confirms that the IRA owner did not receive any goods, services, or financial benefit for an outright gift (except for a deferred gift, the CWA should state the value of the projected annuity payments from a CGA).²¹

The following additional requirements apply to *deferred* gifts for CGAs or to CRTs (“split-interest entities”):

- An IRA owner can only use the QCD exclusion for a gift to a split-interest entity in one taxable year in their lifetime.²²
- An IRA owner’s maximum QCD exclusion for a gift to a split-interest

entity in 2024 is \$53,000 (indexed for inflation in future years).²³

- The CGA or CRT must be funded exclusively with otherwise taxable QCDs of the IRA owner (though, perhaps, QCDs from the IRA owner’s spouse are also permitted to be made to the same CGA or CRT).
- No person may hold an income interest in the split-interest entity other than the IRA owner, the spouse of such individual, or both.²⁴
- The income interest in the split-interest entity must be nonassignable.²⁵
- A CGA must commence fixed payments of at least 5% not later than one year from the date of funding.²⁶

Wrap Up

A charitable gift annuity that is funded with a QCD from an IRA is a great option for seniors who want to support a charity and who also want to receive a steady

and reliable stream of payments for the rest of their lives. The IRA owner should have charitable intent. If they are primarily interested in receiving a steady stream of payments, they should consider using their IRA dollars to purchase a conventional annuity inside the IRA. Payments from a charitable gift annuity will usually be less than those from a conventional annuity, since part of the payment for the CGA is applied as a gift to the charity. In such cases, it may be worthwhile to compare the net after income tax results of the purchase of a commercial annuity and a smaller QCD to a QCD to fund a CGA.

Endnotes

1. Internal Revenue Code §408(d)(8)(F), added by Section 307 of "The SECURE 2.0 Act of 2022," Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328 (Dec. 29, 2022).
2. Internal Revenue Code §408(d)(8)(A).
3. IRS Notice 2007-7; 2007-5 IRB 1, Q&A 42.
4. IRC Sections 501(m)(5) and 514(c)(5).
5. IRC Section 408(d)(8)(C).
6. IRC Section 408(d)(8)(F)(iii).
7. IRS Notice 2007-7; 2007-5 IRB 1, Q&A 39.
8. Even though the age at which RMDs must begin was increased to age 73 [IRC Section 401(a)(9)(C)], the age to be able to make a QCD remains 70½. IRC Section 408(d)(8)(B)(ii).
9. The QCD provisions are in IRC Section 408(d)(8). IRC Section 408 governs IRAs, whereas other types of qualified retirement plans are governed by IRC Sections 401, 403 or 457.
10. IRS Notice 2007-7; 2007-5 IRB 1, Q&A 36.
11. IRC Section 408(d)(8)(B) (last sentence).
12. IRC Section 408(d)(8)(B)(ii).
13. IRC Section 408(d)(8)(B)(i).
14. Ibid.
15. IRC Section 408(d)(8)(A).
16. IRC Section 408(d)(8)(F)(ii).
17. IRC Section 408(d)(8)(G).
18. IRC Sections 408(d)(8)(C) and (F)(iii).
19. IRC Section 408(d)(8)(C).
20. IRC Section 408(d)(8)(F)(iii).
21. See IRS Notice 2007-7; 2007-5 IRB 1, Q&A 39, which states: Qualified charitable distributions must still satisfy the requirements to be deductible charitable contributions under IRC Section 170 (other than the percentage limits of IRC Section 170(b)), including the substantiation requirements under IRC Section 170(f)(8).
22. IRC Section 408(d)(8)(F)(i)(I).
23. IRC Section 408(d)(8)(F)(ii).
24. Ibid.
25. IRC Section 408(d)(8)(F)(iv)(II).
26. IRC Section 408(d)(8)(F)(ii)(III).

About the author.



Christopher R. Hoyt, JD, is a Professor of Law at the University of Missouri Kansas City School of Law where he teaches courses in the area of federal income taxation and business organizations.

Professor Hoyt has served as the Chair of the American Bar Association's Committee on Charitable Organizations (Section of Trusts and Estates) and is on the editorial board of Trusts and Estates magazine. He is an ACTEC fellow, has been designated by his peers as a "Best Lawyer," and was elected to the Estate Planning Hall of Fame by the National Association of Estate Planners & Councils. He is a frequent speaker at legal and educational programs and has been quoted in numerous publications, including *The Wall Street Journal*, *Forbes*, *MONEY* magazine, *The New York Times*, and *The Washington Post*.

This material includes a discussion of one or more tax related topics. This tax related discussion was prepared to assist in the promotion or marketing of the transactions or matters addressed in this material. It is not intended (and cannot be used by any taxpayer) for the purposes of avoiding any IRS penalties that may be imposed upon the taxpayer. Neither New York Life Insurance Company nor its agents provides tax, legal, or accounting advice. Please consult your own tax, legal, or accounting professional before making any decisions. The University of Missouri Kansas City School of Law is not affiliated with New York Life or its subsidiaries. Christopher Hoyt is solely responsible for his content and opinions, which may not necessarily represent the opinions of New York Life. SMRU 6510882 Exp. 04/01/2025