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CHARITABLE IRA ROLLOVER NOW POSSIBLE UNDER NEW PENSION LAW BUT ONLY FOR TWO YEARS

The Congress recently voted overwhelming to send President Bush the most significant pension over hall that has occurred over the last thirty years, named The Pension Protection Act of 2006. Among items most interesting to charities is the fact that under the law, during the calendar years 2006 and 2007, a person aged 70 1/2 and older can make charitable gifts directly from an Individual Retirement Account (IRA) of up to \$100,000 per year. The donor will benefit by not having to report the IRA distribution as taxable income, although the donor will not be able to claim the charitable income tax deduction for the gift.

Eligible IRA owners can use charitable gifts from their IRAs to satisfy their annual minimum distribution requirement. Assume a 75 year old must make a \$65,000 distribution in 2006. If he has the IRA distribute \$55,000 to charity, he does not declare that distribution as income, but does have to distribute another \$10,000 of taxable income from the IRA in this calendar year.

The biggest winners under the new law are IRA owners age 70 1/2 or older who do not itemize income tax deductions. Since the charitable deduction is an itemized deduction, non-itemizers had the worst tax consequence when giving from an IRA under the old law – taxable distributions from the IRA with no corresponding charitable deduction. The charitable IRA rollover law essentially gives eligible IRA donors the equivalent of an unlimited charitable income tax deduction for up to \$100,000 of charitable gifts made from IRAs.

This will be a benefit to Floridians. Since Floridians do not have a state income tax, many wealthy residents do not itemize their deductions on Schedule A of their 1040. The IRS estimates that there are 5.7 million higher-income taxpayers who do not itemize, with Florida being one of the states with the highest percentage of such individuals.

High income taxpayers who lose their itemized deductions under the “phase out” rules (phase out begins at income levels of \$150,500 for married couples), and who lose their personal exemptions or whose social security proceeds are taxed at higher income levels also win under the new law. Why? Because now distributions from the IRA rolled over to charity don’t increase a taxpayer’s Adjusted Gross Income (AGI) and therefore the taxpayer doesn’t move into the tax brackets causing the phase outs, loss of personal exemptions and taxes on social security.

A few words of caution: The new law only applies to IRA accounts. SEP-IRA, 401(k), 403(b) and other retirement plans are not included in the new law. The IRA must make a distribution directly to the charity. If the distribution goes first to the taxpayer, it is deemed taxable income. Donor advised funds and private foundations cannot be the recipient of the charitable IRA rollover. There are other complicated rules so one should visit with their tax advisor prior to making distributions to charity from one’s IRA account.

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