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Wealth & Investment Management

Securing Charitable Gifts – Five Strategies Fundraisers Need in their Toolbox after Secure 2.0

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Agenda

- SECURE Act
- SECURE 2.0
- Five Strategies
- Bequests with Retirement Assets
- Qualified Charitable Distributions
- QCD - Charitable Gift Annuity
- QCD - Charitable Remainder Trusts
- Testamentary Charitable Remainder Unitrust as replacement for Stretch IRA
- Questions

SECURE Act

Setting Every Community up for Retirement

Passed on 12/20/2019 and effective 1/1/2020

Select changes include:

- Increase the age for required minimum distributions (RMDs) from 70 ½ to 72
- Eliminated age limit for contributions to traditional IRAs
- Expanded allowable uses of 529 plans
- Allowed penalty-free distributions of up to $5k per person for birth or adoption of a child
- **Eliminated the Stretch IRA for most non-spouse beneficiaries**
  - **Exceptions**
    - **Spouses**
    - **Beneficiaries not more than 10 years younger**
    - **Account owner's children younger than 18**
    - **Disabled/chronically ill beneficiaries**

Source: Secure Act (2019)
Congress.gov. "H.R. 1994 -- 116th Congress (2019-2020): Settling Every Community Up Enhancement Act of 2019." May 23, 2019. https://www.congress.gov/bill/116th-congress/house-bill/1994/text

Secure Act 2.0

Passed on and effective 12/29/2022

Select changes include:

- RMD increase to age 72 in 2023 and 75 in 2033
- Roth accounts in employer retirement plans exempt from RMDs starting in 2024
- After 15 years in existence, 529 plans can be rolled over to Roth IRA (subject to annual Roth IRA limits and aggregate lifetime limit of $35k)
- QCD limit amount to be indexed for inflation starting in 2024
- **QCD can be made to a charitable gift annuity (CGA) or a charitable remainder trust (CRT)**

Source: Secure Act (2022)

Charitable Bequest

Pre-tax retirement assets are optimal for testamentary gifts to charity

- Pre-tax retirement assets transferred to family are subject to income tax by recipient
- Pre-tax retirement assets transferred to charity are not subject to income taxes preserving the entire amount for charitable uses
- Retirement assets are generally transferred through a beneficiary designation
- When asking donor to leave a gift to charity through their estate, it’s important to remind them to talk with their advisors about using retirement assets to fulfill the bequest
- Real life example: Donor left a $2M bequest to university. Discovered his retirement assets were almost the same amount. Current planning left retirement assets to sister and stock to university. Documents completed to leave retirement assets to charity and stock to sister. End result: more cash to sister with no cost to anyone except the IRS.
- Ask idea: Ask the donor to treat your charity as a child in their wealth plan. For example, if the parents have two children, split the estate in thirds with one third to each child and one third to charity.

Qualified Charitable Distributions (QCDs) – Brief History

Allows gift of retirement assets to qualified charities during life without being subject to income tax

- First introduced by Pension Protection Act in 2006
- Allowed off and off until made permanent by PATH (Protecting Americans from Tax Hikes) Act in 2015
- IRA owner can gift up to $100k each year to a qualified charity
  - Must be 70 ½ or older
  - Distribution of IRA funds direct to charity is not taxable
  - No charitable deduction allowed
  - Counts towards required minimum distribution
  - Best to distribute directly from IRA administrator to qualified charity
  - Cannot distribution to private foundation, donor advised fund, or supporting organization
  - Limited to amount that would otherwise be taxable

- Ask idea: Don't forget to ask donors about making a QCD each year (and don't wait until year-end)

Source: I.R.C. § 408.
I.R.C. § (d)(8).

QCD to Charitable Gift Annuity (CGA)

Secure 2.0 allows QCD to fund CGA

- Charitable gift annuity is a contract between donor and charity. Donor agrees to contribute a sum certain to charity and charity agrees to pay donor or donor and another person a fixed income stream for one or two lives
- Under Secure 2.0 QCD can fund a charitable gift annuity if meets the following:
  - 70 ½ or older
  - Up to $50,000 to a qualified charity (no private foundation, supporting organizations, or DAFs)
    - Counts towards $100,000 annual limit ($100k will be indexed for inflation starting in 2024)
  - One time (one tax year, no carryforward if entire $50k not used in one year)
  - Can split $50k total between multiple charities
  - Annuitant is IRA owner and/or spouse
  - CGA cannot be assignable to anyone including the charity
  - Cannot be comingled with other funds, but spouse can use his/her $50K to jointly fund
  - Minimum 5% payout
  - Counts towards RMD
  - Distribution from IRA not taxable, **but CGA payments are taxable as all ordinary income (no possibility of tax free or capital gain)**
  - No tax deduction, however, gift must otherwise meet all the tax deductibility requirements such as 10% minimum deductible interest test

Source: I.R.C. § 408 (d)(8).

QCD to Charitable Gift Annuity (CGA) Considerations

Important to be caution of the following:

- Because a CGA is not assignable, even to the charity, the CGA agreement should state such
  - This may require charity to resubmit agreement for review in regulated states
- Minimum payout is 5%
  - Not an issue for one life CGAs because IRA owner will be at least 70 ½ and ACGA rate is over 5%
  - Two-lives can be problematic because ACGA recommended rate can be below 5%. If IRA owner is 70 ½ (minimum age) then younger spouse must be age 65 to meet the 5% minimum if charity is using ACGA recommended rates. Because rates are reviewed at least annual, it's important to be aware of current rates
  - Current rates can be found at www.acga-web.org
- Some charities may have minimum funding above $50k
- If charity will accept QCDs for CGAs, it's a good idea to update gift acceptance policies and gift receipts
- When running illustrations make sure charitable deduction is $0 and distributions are all ordinary income
- Ask idea: If your organization has a CGA program, this opportunity could be a good boost to the program. Ask early!

QCD to Charitable Remainder Trust (CRT)

Secure 2.0 allows QCD to fund CRAT or CRUT

- A charitable remainder trust is a separate tax-exempt entity with its own tax id number. It can receive assets tax-free, invest those asset, tax-free and must make a distribution of at least 5% to one or more non-charitable beneficiaries annually.
- Under Secure 2.0 QCD can fund a CRT if following are met:
  - 70 ½ or older
  - Up to $50,000 to a qualified charity (no private foundation, supporting organizations, or DAFs)
    - Counts towards $100,000 annual limit ($100k will be indexed for inflation starting in 2024)
  - One time (one tax year, no carryforward if entire $50k not used in one year)
  - Income beneficiary is IRA owner and/or spouse
  - CRT cannot be assignable to anyone including the charity
  - Cannot be comingled with other funds, but spouse can use his/her $50K to jointly fund
  - Minimum 5% payout
  - Counts towards RMD
  - Distribution from IRA not taxable, **but CRT payments are taxable as all ordinary income (no possibility of tax free or capital gain)**
  - No tax deduction, however, gift must otherwise meet all the tax deductibility requirements such as 10% minimum deductible interest test or for CRATs, 5% probability test or 10% alternative termination test

Source: I.R.C. § 664

QCD to Charitable Remainder Trust (CRT) Considerations

CRTs are not likely a practical option for QCD

- The biggest consideration is the maximum funding amount for a CRT does not make funding a CRT very practical for the following reasons:
  - Cost to have CRT document drafted
  - Cost of hiring a trustee (donor can self-trustee, but for an inexperienced trustee, there are many ways to not get trust administration correct)
  - Annual tax return filing
  - May co-fund with spouse to fund at $100,000
- CRT cannot be assignable and will want to make sure trust document contains such language
- When running illustrations make sure charitable deduction is $0 and distributions are all ordinary income
- CRUT document should state no additional contributions allowed

Testamentary Charitable Remainder Unitrust as replacement for IRA

SECURE Act eliminated the stretch IRA

- Stretch IRA allowed IRA beneficiary to stretch our IRA payments over his/her lifetime, which allowed assets in IRA to continue to grow tax-free and to reduce taxes to beneficiary by taking smaller required distributions over his/her lifetime rather than all at once
- Inherited IRAs must now be distributed over 10 years for most non-spouse beneficiaries. Those excluded from 10-year distribution rule include:
  - Spouses
  - Beneficiaries not more than 10 years younger
  - Account owner's children younger than 18
  - Disabled/chronically ill beneficiaries
- For **charitable** IRA owners who would like beneficiaries to be able to stretch out payments over their lifetimes or who do not want the beneficiary to have lump-sum access to IRA funds, a testamentary CRUT funded with an IRA or other pre-tax retirement assets might be a good option

Source: Secure Act (2022)

Testamentary Charitable Remainder Unitrust as replacement for IRA considerations

This option generally may not get the most amount of funds to beneficiary

- Primary considerations for a donor to choose a stretch IRA are to get the most amount of funds to the beneficiary in the most tax efficient way
- Primary consideration for a testamentary CRUT funded with pre-tax retirement assets are the donor is charitable and/or donor does not want beneficiary to have access to large lump sum amount
- Because of four-tier accounting several years of distributions will taxable to beneficiary as all ordinary income
- If beneficiary is particularly young (and CRT qualifies for lifetime distributions) may be possible to eventually distribute income taxed as capital gain
- Lifetime CRATs can be more difficult to qualify because will not know the beneficiary's age at time of funded or the 7520 rate that will be used
- Can be a viable option for the right donor

Wealth & Investment Management

Thank you

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