

TAX-SMART CHARITABLE GIVING, ESPECIALLY WITH RETIREMENT ASSETS

The Estate Planning Council of Naples

April 19, 2022

CHRISTOPHER R. HOYT
University of Missouri - Kansas City
School of Law

1

2022 Proposed Regulations on RMDs— SECURE Act

Released Feb 24, 2022 – comments due May 25, 2022

Inherited Accounts – General rule: liquidate in ten years

- Death **before** “required beginning date”? (e.g., before age 73)
 - No required distributions in the first nine years. The account needs to be empty by December 31 of the tenth year after the year of the decedent’s death, or else there is a 50% penalty on the balance.
- Death **after** “required beginning date”? (e.g., after age 72)
 - The proposed regs will require the beneficiary to receive minimum distributions every year in years 1 through 9, and the account must be empty at the end of the tenth year.
- Failure to receive that year’s RMD triggers a 50% excise tax on the shortfall

Age of Majority – proposal: age 21 (for minor child of decedent)

Proposed grace period if fail to take RMD in year of death

- Beneficiary can receive distribution before filing date for tax return in following year

2

TAX-SMART CHARITABLE GIVING

- Fewer deduct charitable gifts after 2017 TCJA
- Donor advised funds
 - “bunching” tax deductions into tax years
- QCDs from IRAs
 - Advantages
 - Trap after the SECURE Act – how to avoid
- Stretch an Inherited IRA with a CRT?

3

Who Gets Tax Benefits from Charitable Gifts?

- Donors who itemize tax deductions
(who don't take the "standard deduction")

Impact of 2017 tax changes

- Number of taxpayers who deducted charitable gifts fell from 33 million tax returns in 2017 to just 12 million tax returns in 2018.

4

WHAT TO DO ?

Tax Saving Strategies for Charitable Gifts

- Don't forget the 11% who itemize their tax deductions
- "Bunching" charitable gifts every few years
-- donor advised funds have become more popular
- Most donors over age 70 1/2 should make *ALL* of their charitable gifts from their IRAs:
"Qualified Charitable Distributions" (QCDs)

5

"Bunching" Gifts

- Example: Married donors contribute \$10,000 per year to charities.
 - But with \$10,000 SALT limit, their itemized deductions are only \$20,000.
 - So they take the \$25,000 standard deduction instead
 - They get no tax benefit from their charitable gifts
- BUNCH gifts: Contribute \$40,000 to a DAF.
 - They can itemize this year. Tax savings from gifts.
 - The DAF distributes \$10,000 annually over the next four years to their favorite charities

6

PHILANTHROPIC CHOICE OF CHARITABLE ENTITY

•DONOR ADVISED FUND

-- a fund or account owned by a sponsoring public charity where the donor (or person appointed by the donor) can recommend grants or investments

7

PHILANTHROPIC CHOICE OF CHARITABLE ENTITY

•DONOR ADVISED FUND

-- lower administrative costs
 -- grants to any public charity
 -- very popular: grants from donor advised funds already exceed 50% of grants made from private foundations

8

Who Offers Donor Advised Funds?

- Traditionally – Local Community Foundations
 - *The Collier Community Foundation*
- Since 1993, “National DAFs” Associated With Financial Establishments
 - *Fidelity, Schwab, Vanguard, Goldman Sachs, etc.*
- And, national charities, colleges and universities,
 - *The National Christian Foundation*
 - *Harvard University*

9

Donor Advised Funds

2021 Donor-Advised Fund Report

National Philanthropic Trust

- 1,005,099 – Number of DAFs in 2020
- \$160 billion – assets held by DAFs
- \$ 48 billion – contributions to DAFs
- \$ 35 billion – grants paid by DAFs

10

Growth in Number of Donor Advised Funds

Year	Number of DAFs
2016	290,111
2017	469,749
2018	732,128
2019	864,197
2020	1,005,099

Over 70% of the nation's DAFs are less than five years old

11

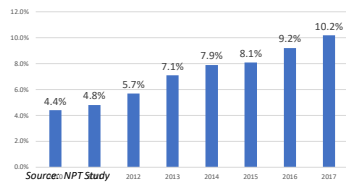
Average Dollars in Each DAF Continues to Decline

New DAFs tend to be established with smaller dollar amounts



12

2018: Gifts to DAFs
Were 10% of All Individual Charitable Giving



13

Qualified Charitable Distribution -- Lifetime Gifts from IRAs --

- Law Permanent! 2015 PATH Act Dec 20.2015
 - Eligible Donors:
 - Won't report charitable gifts from IRAs as taxable income
 - Not entitled to charitable income tax deduction
- ☒ Example: Donor, age 75, who has a \$10,000 RMD from IRA, says:
- ☐ "Issue a check to a charity for \$4,000
 - ☐ "Issue a check to me for \$6,000"

14

<p>Check only one <div> <div></div> <div></div> </div> </p> <p>Exemptions</p> <p>If more than four exemptions, see instructions and check ▶</p>	<p>1 Marital deduction ▶ Enter spouse's SSN above ▶ Q13 Enter spouse's ▶</p> <p>2 Charitable deduction ▶ Enter the amount of each charitable deduction ▶</p>			
	<p>3 Yusufi ▶ Spouse can claim you as a dependent, also check box for ▶</p> <p>4 Spouse ▶</p>	<p>5 Donor's social security number ▶</p> <p>6 Donor's religious ID ▶</p> <p>7 Gift or sale to child ▶</p>	<p>8 Donor's religious ID ▶</p> <p>9 Donor's religious ID ▶</p> <p>10 Donor's religious ID ▶</p>	<p>11 Donor's religious ID ▶</p> <p>12 Donor's religious ID ▶</p> <p>13 Donor's religious ID ▶</p>
	<p>14 Donor's religious ID ▶</p> <p>15 Donor's religious ID ▶</p> <p>16 Donor's religious ID ▶</p>	<p>17 Donor's religious ID ▶</p> <p>18 Donor's religious ID ▶</p> <p>19 Donor's religious ID ▶</p>	<p>20 Donor's religious ID ▶</p> <p>21 Donor's religious ID ▶</p> <p>22 Donor's religious ID ▶</p>	<p>23 Donor's religious ID ▶</p> <p>24 Donor's religious ID ▶</p> <p>25 Donor's religious ID ▶</p>
	<p>26 Donor's religious ID ▶</p> <p>27 Donor's religious ID ▶</p> <p>28 Donor's religious ID ▶</p>	<p>29 Donor's religious ID ▶</p> <p>30 Donor's religious ID ▶</p> <p>31 Donor's religious ID ▶</p>	<p>32 Donor's religious ID ▶</p> <p>33 Donor's religious ID ▶</p> <p>34 Donor's religious ID ▶</p>	<p>35 Donor's religious ID ▶</p> <p>36 Donor's religious ID ▶</p> <p>37 Donor's religious ID ▶</p>
	<p>38 Donor's religious ID ▶</p> <p>39 Donor's religious ID ▶</p> <p>40 Donor's religious ID ▶</p>	<p>41 Donor's religious ID ▶</p> <p>42 Donor's religious ID ▶</p> <p>43 Donor's religious ID ▶</p>	<p>44 Donor's religious ID ▶</p> <p>45 Donor's religious ID ▶</p> <p>46 Donor's religious ID ▶</p>	<p>47 Donor's religious ID ▶</p> <p>48 Donor's religious ID ▶</p> <p>49 Donor's religious ID ▶</p>
	<p>50 Donor's religious ID ▶</p> <p>51 Donor's religious ID ▶</p> <p>52 Donor's religious ID ▶</p>	<p>53 Donor's religious ID ▶</p> <p>54 Donor's religious ID ▶</p> <p>55 Donor's religious ID ▶</p>	<p>56 Donor's religious ID ▶</p> <p>57 Donor's religious ID ▶</p> <p>58 Donor's religious ID ▶</p>	<p>59 Donor's religious ID ▶</p> <p>60 Donor's religious ID ▶</p> <p>61 Donor's religious ID ▶</p>
	<p>62 Donor's religious ID ▶</p> <p>63 Donor's religious ID ▶</p> <p>64 Donor's religious ID ▶</p>	<p>65 Donor's religious ID ▶</p> <p>66 Donor's religious ID ▶</p> <p>67 Donor's religious ID ▶</p>	<p>68 Donor's religious ID ▶</p> <p>69 Donor's religious ID ▶</p> <p>70 Donor's religious ID ▶</p>	<p>71 Donor's religious ID ▶</p> <p>72 Donor's religious ID ▶</p> <p>73 Donor's religious ID ▶</p>
	<p>74 Donor's religious ID ▶</p> <p>75 Donor's religious ID ▶</p> <p>76 Donor's religious ID ▶</p>	<p>77 Donor's religious ID ▶</p> <p>78 Donor's religious ID ▶</p> <p>79 Donor's religious ID ▶</p>	<p>80 Donor's religious ID ▶</p> <p>81 Donor's religious ID ▶</p> <p>82 Donor's religious ID ▶</p>	<p>83 Donor's religious ID ▶</p> <p>84 Donor's religious ID ▶</p> <p>85 Donor's religious ID ▶</p>
	<p>86 Donor's religious ID ▶</p> <p>87 Donor's religious ID ▶</p> <p>88 Donor's religious ID ▶</p>	<p>89 Donor's religious ID ▶</p> <p>90 Donor's religious ID ▶</p> <p>91 Donor's religious ID ▶</p>	<p>92 Donor's religious ID ▶</p> <p>93 Donor's religious ID ▶</p> <p>94 Donor's religious ID ▶</p>	<p>95 Donor's religious ID ▶</p> <p>96 Donor's religious ID ▶</p> <p>97 Donor's religious ID ▶</p>
	<p>98 Donor's religious ID ▶</p> <p>99 Donor's religious ID ▶</p> <p>100 Donor's religious ID ▶</p>	<p>101 Donor's religious ID ▶</p> <p>102 Donor's religious ID ▶</p> <p>103 Donor's religious ID ▶</p>	<p>104 Donor's religious ID ▶</p> <p>105 Donor's religious ID ▶</p> <p>106 Donor's religious ID ▶</p>	<p>107 Donor's religious ID ▶</p> <p>108 Donor's religious ID ▶</p> <p>109 Donor's religious ID ▶</p>
	<p>110 Donor's religious ID ▶</p> <p>111 Donor's religious ID ▶</p> <p>112 Donor's religious ID ▶</p>	<p>113 Donor's religious ID ▶</p> <p>114 Donor's religious ID ▶</p> <p>115 Donor's religious ID ▶</p>	<p>116 Donor's religious ID ▶</p> <p>117 Donor's religious ID ▶</p> <p>118 Donor's religious ID </p>	

15

Qualified Charitable Distribution -- Lifetime Gifts from IRAs --

- IRA owner must be over age 70 ½
- Maximum: \$100,000 per year
- Yes! Charitable gift satisfies required minimum distribution requirement from IRA!

16

WHO WINS?

- Donors who do not itemize tax deductions ("standard deduction")
- Donors who live in states where the state income tax laws do not permit deductions for charitable contributions (Ohio, Indiana, etc)

17

WHO WINS ?

- Donors who incur taxes as their income increases
 - social security benefits taxable
 - Medicare "B" premiums
 - 3.8% health tax if AGI > \$200,000
- The heirs
 - inherited stock gets step-up tax basis
 - inherited IRAs are taxable income

18

LEGAL REQUIREMENTS

- Over age 70 ½
- IRA (only) – not 403(b), 401(k), etc.
- “Directly” from the IRA to charity
 - “IRA checkbooks” are OK

19

LEGAL REQUIREMENTS

- ELIGIBLE CHARITY – Public charity or private *operating* foundation
 - however, a PF, donor advised fund or supporting org is not eligible
- Must qualify for full charitable deduction – no dinners; no CGAs

20

LEGAL REQUIREMENTS

- Taxable part of IRA distributions (only)
 - tax-free distributions protected
- Donor must have letter from charity that donor received no goods or services in exchange for the gift

21

TECHNICAL ISSUES

- Yes! Charitable IRA gifts can satisfy legally binding pledges!
- Joint return? Up to \$200,000
- No withholding taxes
- Beneficiary of an inherited IRA who is over age 70 ½ can make charitable gifts of required distributions

22

Want to make charitable gifts from your IRA ("QCD")?
Then **NEVER** make a tax-deductible contribution
to your IRA after attaining age 70 ½

SECURE Act: Beginning in the year 2020, employed taxpayers over age 70 ½ are permitted to make tax-deductible contributions to a traditional IRA (e.g, up to \$7,000 per year)

HOWEVER: If a person ever makes a tax-deductible contribution to an IRA after age 70 ½, then the amount of the qualified charitable distribution from an IRA that can be excluded from taxable income is reduced by that amount.

23

Want to make charitable gifts from your IRA ("QCD")?
Then **NEVER** make a tax-deductible contribution
to your IRA after attaining age 70 ½

New last sentence added to end of Sec 408(d)(8)(A):

The amount of distributions not includible in gross income by reason of the preceding sentence for a taxable year (determined without regard to this sentence) shall be reduced (but not below zero) by an amount equal to the excess of—

- ***(i) the aggregate amount of deductions allowed to the taxpayer under section 219 for all taxable years ending on or after the date the taxpayer attains age 70 ½, over***
- ***(ii) the aggregate amount of reductions under this sentence for all taxable years preceding the current taxable year.***

24

Want to make charitable gifts from your IRA ("QCD")?
Then **NEVER** make a tax-deductible contribution
to your IRA after attaining age 70 ½

LEGISLATIVE INTENT

- To get a tax benefit from a charitable gift, a taxpayer must generally itemize deductions (state taxes, mortgage interest, etc)
- Only 11% of tax returns itemized deductions in 2018
- A working senior could (a) contribute \$7,000 to an IRA and then (b) distribute \$7,000 that same year to charities, and indirectly deduct charitable gifts via IRA contributions

ADMINISTRATIVE and BOOKEEPING HEADACHES

- People in their 80s and 90s will need to keep all tax records after age 70 ½ and then make cumulative computations

25

Want to make charitable gifts from your IRA ("QCD")?
Then **NEVER** make a tax-deductible contribution
to your IRA after attaining age 70 ½

EXAMPLE

- I. Work's RMD both for this year and next year is \$5,000
- She donates each year's RMD to charity; would be QCD
- She is employed. This year she deducts \$7,000 for IRA.
Next year she does not deduct any IRA contribution
- How much can she EXCLUDE from income for QCD?

Year	Donate	Exclude	Taxable
This year	\$5,000	-0-	\$5,000*
Next year	\$5,000	\$3,000	\$2,000*

* Taxpayer can claim an *itemized* charitable deduction

26

Only the \$7,000 IRA deduction is a problem for QCDs

Combine lines 1 through 8. Enter here and on Form 1040 or 1040-SR, line 7a

Part II Adjustments to income

10 Educator expenses

11 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2100

12 Health savings account deduction. Attach Form 8889

13 Moving expenses for members of the Armed Forces. Attach Form 3903

14 Deductible part of self-employment tax. Attach Schedule SE

15 Self-employed SEP, SIMPLE, and qualified plans

16 Self-employed health insurance deduction

17 Penalty on early withdrawal of savings

18a Alimony paid

18b Recipient's SSN

19 IRA deduction

20 Student loan interest deduction

21 Tuition and fees. Attach Form 8817

22 Add lines 10 through 21. These are your adjustments to income. Enter here and on Form 1040 or 1040-SR, line 22

27

Want to make charitable gifts from your IRA ("QCD")?
Then NEVER make a tax-deductible contribution
to your IRA after attaining age 70 ½

STRATEGIES

- If ever want to make a QCD, don't contribute after age 70 ½
- Working seniors can contribute to plan at work (401(k), etc.)
- Working seniors can contribute to a Roth IRA (income under \$14k, \$21k married)
- Self-employed? Contribute to an SEP-IRA
 (but don't make a QCD from the SEP that same year)

Footnote: Employed upper-income taxpayers can't even make tax-deductible contributions to an IRA if there is a plan at work (e.g., 401(k)). No tax deduction is permitted in year 2021 if AGI is over \$78,000 (\$129,000 on married joint returns). IRS Tax Tip 2021-170.

28

Stretch IRA

- "Stretch IRA" means an inherited retirement account (e.g., IRA), where payments are gradually made over the beneficiary's life expectancy
- Until the enactment of the SECURE Act, it was fairly easy for any beneficiary who inherited a retirement account to receive distributions until the age of 83 (or older for beneficiaries who inherited at an older age)
- Beginning 2020: General rule is a ten year liquidation
- Inherited IRA distributions are taxable income
- A \$1million IRA will shrink to \$700k in 10 years (oversimplified)

Outright charitable bequest?
 Family & charity combined: philanthropy (PF or DAF)

29

Stretch IRA

- "Stretch IRA" means an inherited retirement account (e.g., IRA), where payments are gradually made over the beneficiary's life expectancy
- Until the enactment of the SECURE Act, it was fairly easy for any beneficiary who inherited a retirement account to receive distributions until the age of 83 (or older for beneficiaries who inherited at an older age)
- Beginning 2020: General rule is a ten year liquidation
- "Would you like your descendants to be able to get an income stream from all of your retirement assets for the rest of their lives?"

30

LIQUIDATE INHERITED IRAs IN TEN YEARS

IMPLICATIONS FOR CHARITIES

Donors more likely to consider

- Outright bequests
- Retirement assets to tax-exempt CRT
 - Child: income more than 10 years; then charity

31

CHARITABLE REMAINDER TRUST

- Payment to non-charitable beneficiary (ies) for life *or* for a term of years
 (maximum 20 years)
- Remainder interest distributed to charity
- ***Exempt from income tax***

32

LIQUIDATE INHERITED IRAs IN TEN YEARS

IMPLICATIONS FOR CHARITIES

Donors more likely to consider

- Outright bequests
- Retirement assets to tax-exempt CRT
 - Child: income more than 10 years; then charity
 - Spouse & children (no estate tax marital deduction)

33

2-GENERATION CHARITABLE REMAINDER UNITRUST

- Typically pays 5% to elderly surviving spouse for life, then 5% to children for life, then liquidates to charity
- Like an IRA, a CRT is exempt from income tax
- Can be like a **QTIP trust for IRD assets**

34

LIQUIDATE INHERITED IRAs IN TEN YEARS

STRATEGIES:

- **Lotsa beneficiaries! Share the love! Spread the wealth!**
Example: Children and grandchildren, rather than just children
- **Lifetime Roth IRA conversions, if current income tax rate is likely to be less than future tax rates**
- **Are any beneficiaries "eligible designated beneficiaries"?**
They can receive distributions over their remaining life expectancy. They are exceptions to the ten year rule.
- **Name a tax-exempt charitable remainder trust as the beneficiary.** Make distributions for entire life of the family member, with remainder interest paid to a charity

35

Theory: Tax advantage of income tax deferral !

Move IRD tax-free after death from one tax exempt trust (e.g., the IRA) to another tax-exempt trust (the CRT)

[compare:

a charitable lead trust is NOT tax-exempt;
don't name a CLT as an IRA beneficiary !]

36

Theory: Tax advantage of income tax deferral !

Move IRD tax-free after death from one tax exempt trust (e.g., the IRA) to another tax-exempt trust (the CRT)

It can be done! PLR 199901023

- No taxable income to beneficiaries until they receive distributions from CRT

37

Can a CRT Produce More Family Wealth Than a Ten Year Liquidation?

Yes. It is possible. But usually not likely.

- It can happen with long-term CRUTS (e.g., 40 or 50 years) and beneficiaries who pay high income tax rates
- Outcomes vary with investment returns and tax rates

38

Can a CRT Produce More Family Wealth Than a Ten Year Liquidation?

5% CRUT -- Investments earn 5% -- Tax rate: 40%				
		5% Annual		
		Income		
CRT	\$1,000,000 < charity	\$50,000		
Income tax	-400,000			
After-tax	\$600,000 < family gets	\$30,000		

39

Can a CRT Produce More Family Wealth Than a Ten Year Liquidation?

5% CRUT -- Investments earn 5% -- Tax rate: 40%				
		5% Annual		
		Income	Consume	Save
CRT	\$1,000,000	\$50,000	\$30,000	\$20,000
Income tax	-400,000	Income tax >>>		-\$8,000
		Net annual investment		\$12,000
After-tax	\$600,000	Purchase \$600k Life insurance? <50 years?		

40

Can a CRT Produce More Family Wealth Than a Ten Year Liquidation?

5% CRUT -- Investments earn 5% -- Tax rate: 20%				
		5% Annual		
		Income		
CRT	\$1,000,000 < charity	\$50,000		
Income tax	-200,000			
After-tax	\$800,000 < family gets	\$40,000		

41

Can a CRT Produce More Family Wealth Than a Ten Year Liquidation?

5% CRUT -- Investments earn 5% -- Tax rate: 20%				
		5% Annual		
		Income	Consume	Save
CRT	\$1,000,000	\$50,000	\$40,000	\$10,000
Income tax	-200,000	Income tax >>>		-\$2,000
		Net annual investment		\$8,000
After-tax	\$800,000			<50 years?

42

Can a CRT Produce More Family Wealth Than a Ten Year Liquidation?

Yes. It is possible. But usually not likely.

- It can happen with long-term CRUTS (e.g., 40 or 50 years) and beneficiaries who pay high income tax rates
- Outcomes vary with investment returns and tax rates
- A CRT is best for someone with charitable intentions who also wants to benefit family. It should not be foisted on people who have no charitable intent.

43

CRUT Can Offer Other Benefits

- A steady income-stream to the child that will last for the child's entire lifetime
- Asset protection provisions can be included in the CRT in the event of a divorce or other financial challenge
- Professional asset management is possible with a corporate trustee, which could be particularly helpful for a child who would have likely mismanaged a large lump-sum inheritance

44

TAX-SMART CHARITABLE GIVING, ESPECIALLY WITH RETIREMENT ASSETS

The Estate Planning Council of Naples

April 19, 2022

CHRISTOPHER R. HOYT
University of Missouri - Kansas City
School of Law

45