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CARES Act Includes Charitable Giving Incentives

Posted by Bill Laskin on March 27, 2020

The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, which the President signed into law on March 27th, provides more than $2 trillion in relief touching nearly every corner of the U.S. economy: large and small businesses, health care providers, non-profits, individual citizens, and on and on. Included in its 880 pages are several provisions of particular interest to gift planners and to fundraisers generally. Let's discuss them. I'll start with the most dramatic change.

- **100% of AGI limit available in 2020 for cash gifts to most public charities:** For the 2020 tax year only, donors may elect to apply a new 100% of adjusted gross income (AGI) limit to cash gifts to public charities ("50% charities"). Gifts to donor advised funds (DAFs) or supporting organizations (SOs) are not eligible for this special election. The 100% limit is reduced dollar-for-dollar by other itemized charitable deductions. This means that in 2020, a donor who deducts 30% of her AGI in long term appreciated property gifts and elects the 100% of AGI limit for qualified cash contributions will be able to also deduct up to 70% of her AGI for qualified cash gifts, a total deduction of up to 100% of AGI. If this donor uses all of her available deduction for qualified cash gifts, she would pay no federal income tax in 2020! Ordinarily, this donor's total deduction would be limited to 60% of AGI and she would have to carry forward the rest. This change presents a big opportunity for attracting major gifts and planned gifts in 2020.

  A donor who makes the 100% of AGI election can carry forward unused qualified cash gift deductions up to 5 years. The carryforward will be subject to the normal 60% of AGI limit, as are cash deductions carried forward from past years.

  The 100% election may not always be the tax-wise choice: Because federal income tax rates are progressive, it is not a given that it will be to a donor's advantage to make the 100% of AGI election. For example, a single-donor who has taxable income of $200,000 is in the 32% federal income tax bracket. If she donates $200,000 in qualified cash contributions, makes the 100% of AGI election, and itemizes no other deductions, he will pay no federal income tax in 2020, saving $45,015.50 in tax as a result. However, if he doesn't make the election, he would deduct $120,000 and carry forward $80,000 to 2021. Assuming he can deduct the remaining $80,000 in 2021 and again has taxable income of $200,000, he will save $31,625 in federal income tax in 2020 and approximately another $22,136 in 2021, a total tax savings over the two years of $53,761. A donor in the highest federal income tax bracket, 37%, could see an even larger tax benefit by not taking the 100% election. Donors should consult their tax advisers to determine whether the 100% election makes sense for them.

- **Non-itemizers eligible for $300 charitable deduction:** A reduction in taxable income is available in 2020 for donors who do not itemize their deductions. It is an "above-the-line" adjustment to income that will reduce a donor's AGI and thereby reduce taxable income. This adjustment is available for cash gifts to public charities ("50% charities") only and is limited to $300 per taxpayer ($600 for a married couple). It is not available for gifts to DAFs or SOs, nor for cash deductions carried forward from prior years. While far more limited than above-the-line deductions or the "Universal Charitable Deduction" previously proposed by the charitable sector, this change will encourage the 90% of taxpayers who *do not itemize* to make more cash gifts in 2020. Donors who prefer to itemize their deductions can still itemize them (see (1) above).

  The text in the Act is ambiguous as to whether this provision applies just for the 2020 tax year or for future years as well. The best interpretation appears to be that it applies for 2020 only.

- **Required minimum distributions waived in 2020 for most donors:** Most donors will not have a required minimum distribution from their retirement plan in 2020. Minimum distributions will not be required from IRAs, 401(k)s, 403(b)s and most other defined contribution plans maintained by an employer for individuals. Minimum distributions that have already started are still required from defined benefit pension plans and some 457 plans. However, required minimum distributions that would have had to start in 2020 don't have to start until 2021, including distributions from defined benefit pension plans and 457 plans. This change will dampen somewhat the incentive for a donor to make a qualified charitable distribution (QCD) from her IRA in 2020. Even so, making a QCD this year will still allow itemizers and non-itemizers alike to direct up to $100,000 from their IRA to charities in a tax efficient manner.

- **Limit on cash contributions from corporations increased to 25% in 2020:** The taxable income limit that applies to cash contributions made by corporations to "50% charities" (again, except DAFs and SOs) is increased from 10% to 25% for 2020. The usual 10% limit still applies to other charitable contributions by corporations, and those contributions reduce the 25% limit dollar-for-dollar. Qualified cash contributions in excess of the 25% limit can be carried forward for up to 5 years under the usual limits. This change should encourage more corporate giving than would have otherwise occurred this year.

- **Limit on contributions of food inventory increased to 25% in 2020:** The limitation on deductions for contributions of food inventory by any trade or business is increased from 15% to 25% for 2020. This change should encourage more food donations in 2020 from businesses of all types.

The CARES Act has been made necessary by a terrible pandemic. Foremost in the minds of your donors are acute concerns about their continued health and financial wellbeing and of those they care about. Nevertheless, many of them are also eager to do what they can to help others less fortunate. Contact your donors, ask how they are doing, and remind them that with their help your organization can continue to improve lives in the face of the coronavirus crisis and beyond.

Categories: Tax Incentives On Charitable Giving, Gift Annuity Taxation, CARES Act

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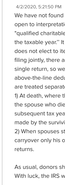

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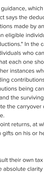

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3/30/2020, 6:12:56 PM

Bill, thank you so much for this expert summary - the best I've seen. I have a question for you about the $300 limit on above-the-line deductions. I read that section of the bill this morning and when I read it, I interpreted it to be $300/tax return, rather than $300/taxpayer. Did you find clarifying guidance elsewhere? THANK YOU!!! :)

Reply to

> 4/2/2020, 5:21:50 PM
>
> We have not found clarifying guidance, which leaves the text in the Act open to interpretation. The act says the deduction is available for "qualified charitable contributions made by an eligible individual during the taxable year." It defines an eligible individual as "any individual who does not elect to itemize deductions." In the case of a married couple filing jointly, there are two individuals who can elect not to itemize on a single return, so we reason that each one should be eligible for a $300 above-the-line deduction. Other instances where spouses who file jointly are treated separately regarding contributions:
>
> 1) At death, where the contributions being carried over from past years by the spouse who died expire and the surviving spouse must for subsequent tax years compute the carryover only with regard to the gifts made by the surviving spouse.
>
> 2) When spouses stop filing joint returns, at which point each one can carryover only his or her own gifts on his or her subsequent separate tax returns.
>
> As usual, donors should consult their own tax advisors on this question. With luck, the IRS will provide absolute clarity on this question soon.

4/1/2020, 2:56:31 PM

Based on questions received from clients since we posted this article and additional discussion here at PG Calc, I offer the following clarifications:

1) The election to waive the limitation on qualified cash donations appears to be available separately for each contribution. That is, the donor could elect to waive the limitation for one qualified cash donation and not waive it for another. Whether a donor would want to make the election for some gifts and not for others will depend on the donor's specific tax situation.

2) Several clients have asked whether waiving the deduction limitation is available for cash donations to fund a life income plan in addition to outright donations. In short, we don't know. The Act is silent on this question. Since a gift annuity entails a direct transfer to the charity, one can make a strong argument that it should qualify. Gifts to CRTs of PIFs might also qualify on the basis that they are considered gifts "to" the charity, just like outright gifts, not "for the use of" the charity. Our best advice is to advise your donors to consult their own tax counsel on this question.

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