

Consolidated Appropriates Act of 2023

New Charitable Planning Opportunities with Retirement Plans

On December 29 President Biden signed the Consolidated Appropriations Act of 2023 ("Act"). Contained in the provisions of the Act is the new Secure Act 2.0, which addresses many issues related to retirement planning. For example, starting in 2023 the Act raises the age for required minimum distributions (RMDs) to age 73 for individuals born between 1951 and 1959 and age 75 for those born in 1960 or later. The Act also creates two new important charitable planning opportunities:

- 1. QCD Inflation Adjustment.** Beginning in 2024, the ACT provides for an annual increase (indexing for inflation) of the annual limit for qualified charitable distributions (QCDs), also known as IRA charitable rollovers. A QCD is a tax-free transfer from an IRA to a qualified charity. The QCD gift does not qualify for an income tax charitable deduction but instead escapes income tax liability on the transfer. The current annual limit for an outright QCD to charity (not to a life income plan as explained below) is \$100,000. This limit, as well as a new \$50,000 QCD limit for a life income plan, will increase in 2024 by an amount to account for inflation.

The QCD must be transferred directly to charity (or a life income plan) from the IRA. The transfer cannot be made to a donor's checking or other account then to charity. The donor's IRA custodian can make the delivery by check or wire delivery. Money in another type of qualified retirement plan can be transferred tax-free to an IRA then from the IRA to charity. The QCD cannot be made to a donor advised fund, supporting organization, or private foundation.

- 2. New QCD for rollover to Life Income Plans.** The Act expands the definition of QCDs to include one-time distributions to create life income plans, specifically charitable gift annuities (CGAs) and charitable remainder unitrusts or annuity trusts (collectively, CRTs). This new type of QCD is a one-time maximum transfer of \$50,000 to a qualified CRT, or in exchange with a charity for a CGA. Therefore, the new QCD can only be done once during the lifetime of the IRA owner. Other important rules apply to the new QCD for life income plans:

- This new QCD to life income plans starts in 2023 and is available to taxpayers aged 70.5 years and older.
- The new QCD must be made for a CGA or to a CRT which would qualify for an income tax charitable deduction under current law. So, the CGA or CRT must pass the 10% minimum income tax charitable deduction test. And the CRT must have a minimum payout rate of 5%. A charitable remainder annuity trust must pass the 5% probability test.
- The transfer is one-time only, up to \$50,000 in a single year. So, a donor can transfer amounts less than \$50,000 in a year, then add more in the same year. But no additional transfers are available in future years even if the balance is less than \$50,000.
- The \$50,000 maximum will be indexed for inflation, beginning in 2024.
- All payments by the CRT or CGA funded by the QCD must be fully taxable at the recipient's ordinary income tax rate. There is no possibility of tax-free payments or income taxed at the capital gain tax rate from the CGA or CRT.
- Only the IRA owner and/or his/her spouse may receive payments from the CRT or CGA funded by the new QCD. No payments are allowed to children or others.
- Spouses can each contribute up to \$50,000 from their respective IRAs to a single CRT or for one joint-life CGA.
- Only new CRTs would qualify for this QCD. Existing CRTs cannot receive this new QCD.
- A CRT created with the QCD cannot later receive other gifts from the IRA or other donated assets such as stock or real estate.
- A CGA funded by the new QCD must have a payout rate of at least 5%. This should not be an issue for single-life CGAs, since the 2023 payout rates recommended by the American Council of Gift Annuities (ACGA) begins at 5% for a donor aged 61.
- The Act prohibits the new QCD for deferred payment CGAs. And CGAs funded by the QCD must be non-assignable.

However, charities must be careful with the ages for a two-life CGA for the IRA owner and spouses. The ACGA recommended 5% payout rate is available at:

- age 63 (younger age) and 76 and up (older age), or
- age 64 (younger) and 73 and up (older), or
- age 65 (younger) and 71 and up (older), or
- age 66 (younger) and 70 and up (older).