

## **WHAT IS THE “LEGACY IRA” LEGISLATION?**

Under certain circumstances, a donor can make a one-time tax-free Qualified Charitable Distribution (QCD) from their IRA in exchange for a life income gift. This is a once in a lifetime election, subject to the limitations below.

### **HOW DOES IT WORK?**

The Legacy IRA plan allows a tax-free QCD from an IRA account to establish a charitable gift annuity or charitable remainder trust. For reasons below, a QCD CRT is impractical and unlikely to be attractive to many donors; the QCD CGA is a more attractive gift vehicle.

### **HOW OFTEN CAN ONE USE THE LEGACY IRA QCD?**

A donor can take advantage of this opportunity in only one tax year during their lifetime.

### **HOW MUCH CAN A DONOR CONTRIBUTE?**

Up to \$50,000, across one or more gifts, at one or more charities, all of it in one tax year. The total amount distributed counts toward the annual \$100,000 limit for QCDs. (Note that the \$50,000 and \$100,000 limits will be adjusted for inflation each year beginning in 2024.)

### **IF THE DONOR DOESN'T USE THE FULL \$50,000 IN A SINGLE CALENDAR YEAR, DOES IT ROLLOVER?**

No. They have one year in which to use this opportunity, there is no rollover or carry forward.

### **HOW DOES THE LEGACY IRA QCD WORK WITH THE EXISTING QCD LAW?**

As with QCD outright gifts, QCD life income gifts count towards a donor's required minimum distribution (RMD). The total QCD limit is still \$100,000 per year, but within this limit there is an aggregate limit of \$50,000 for QCD life income gifts. For example, a donor could make QCD distributions of \$25,000 to two different charities to establish a QCD CGA at each and make an additional outright QCD of \$50,000 to a third charity, all in the same calendar year.

### **IS THERE AN AGE LIMIT?**

A donor must be at least age 70½ at the time the donor makes a QCD contribution of any kind. If a donor includes a non-donor spouse under 70½, the gift will still qualify so long as the payout amount is at least 5%.

## **DOES A QCD TO A LIFE INCOME PLAN SATISFY THE DONOR'S RMD?**

Yes. Just like an outright gift of a QCD, a QCD to fund a life income plan satisfies the donor's RMD dollar for dollar. There is more information about RMDs below.

### **CAN A DONOR NAME OTHERS TO RECEIVE PAYMENTS FROM A LEGACY IRA QCD CGA OR QCD CRT?**

A donor can name him or herself and/or a spouse to receive payments.

### **ARE QCD CGA ANNUITY PAYMENTS TAXABLE?**

Yes, all QCD CGA payments are taxed as ordinary income.

### **ARE QCD CRT PAYMENTS TAXABLE?**

Yes, all QCD CRT payments are taxed as ordinary income.

### **DOES THE DONOR GET A CHARITABLE DEDUCTION FOR A QCD CGA OR QCD CRT CONTRIBUTION?**

There is no charitable deduction, however, there is no income tax on the QCD either.

### **WHAT IS THE MINIMUM PAYOUT?**

The minimum payout for both QCD CGAs and QCD CRTs is 5%. However, the rate a charity will offer for a QCD CGA will depend upon the age of the annuitant(s) at the time of the gift. Using the ACGA rates effective January 1, 2023, annuity rates for a single life age 70½ (age 71) or two lives, both age 70½ (age 71), will exceed 5%. Use caution if a non-donor annuitant spouse is under 70½ to ensure you're meeting the 5% minimum.

### **CAN A DONOR FUND A DEFERRED/FLEXIBLE DEFERRED OR COLLEGE ANNUITY WITH A QCD?**

No, but the legislation does allow for a CGA with annual payments beginning one year from the date of the distribution.

### **WHAT ABOUT FUNDING A CHARITABLE REMAINDER TRUST WITH A QCD?**

The law permits funding a charitable remainder annuity or unitrust with a QCD. As a practical matter this option is very limited. In most circumstances, funding a CRT with only \$50,000 does not make economic or practical

sense. If a couple both have IRAs and are over 70½ they could jointly contribute \$100,000 to a CRT. However, this is probably still too low to be practical. For these reasons, the Legacy IRA QCD will primarily be used with charitable gift annuities.

#### **CAN A DONOR MAKE AN ADDITIONAL CONTRIBUTION TO THE CRT TO BRING IT UP TO OUR REQUIRED CRT MINIMUM GIFT?**

No. A donor cannot contribute any other asset to the CRT except for the initial QCD.

#### **CAN A DONOR CONTRIBUTE AN ADDITIONAL ASSET TO FUND THE CGA?**

No, additional assets cannot be combined. Any asset contributed on the same day to the charity for a CGA would have to be used to establish a second CGA on the same date.

#### **HOW DOES A DONOR MAKE A QCD CGA GIFT?**

To qualify, the QCD must go directly from the IRA custodian to charity, it cannot first be distributed to the plan's owner (the donor). To ensure that the transfer happens properly, the donor needs the charity's legal name, their tax ID number (EID), and their legal address. This information, along with the QCD amount, is then given to the custodian, typically through an online form. The custodian will then issue a check directly to the charity. Some plan owners have check writing ability against their IRA accounts. In such cases, a donor could write a check directly to the charity to establish the gift.

#### **HOW DOES A DONOR MAKE A QCD CRT GIFT?**

The trust must be drafted and signed prior to the donor requesting the QCD funding amount. Once the trust has been established, the donor follows the steps above to request a QCD distribution from their IRA custodian to the trustee of the CRT.

#### **HOW DO I DETERMINE THE GIFT DATE?**

The legal date of gift for all QCDs, whether outright or used to establish a life income gift, is the date they leave the donor's account. For checks received directly from the IRA custodian, charities can use the date the check is issued. For checks received from donors written against their IRA accounts, best practice

is for the charity to contact the donor and request the date the QCD was debited from their IRA.

#### **CAN THE ANNUITANT ASSIGN THEIR INCOME INTEREST IN FAVOR OF THE CHARITY?**

No. For a Legacy IRA the income interest in the CGA or CRT is non-assignable. You will need to amend your annuity agreements for CGAs if they say the annuity is assignable to the issuing charity, which is quite typical. If your charity is registered in states that require submission of sample CGA contracts, you will need to submit additional sample contracts for CGAs funded with QCDs (likely with the assignability section considered a variable and not fixed text).

#### **HOW DO THE AGES FOR A QCD AND THE RMD INTERACT?**

A donor can make a QCD beginning at age 70½. The age at which RMD's are mandatory is 73 beginning in 2023. A donor can make a QCD beginning at 70½ and prior to being subject to RMD, but the additional tax benefit of satisfying the RMD with the QCD does not begin until the donor is subject to RMD.

#### **WHAT IS THE REQUIRED MINIMUM DISTRIBUTION?**

Qualified retirement plans, such as 401(k)s and IRAs, are funded with pre-tax income and grow tax-free. However, when the taxpayer withdraws money from those accounts, the withdrawal is taxed as ordinary income. Withdrawals are not required until the plan owner reaches an age subject to the Required Minimum Distribution (RMD), after which the individual must withdraw – and pay income tax on – a certain required minimum amount each year. Beginning in 2023, the age at which RMDs are mandatory is 73. Failure to take the full RMD is subject to a penalty of 25% of the amount not withdrawn. If the individual doesn't want or need their RMD, a QCD is a good way to avoid taxation on the RMD, and the penalty for failure to make the full RMD withdrawal.

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