

TAX-FREE CHARITABLE ROLLOVERS FROM IRAS

DRAFT QUESTIONS FOR REGULATORY GUIDANCE

Q- HOW WILL A TAXPAYER REPORT QUALIFIED CHARITABLE DISTRIBUTIONS (QCD) TO THE IRS?

A taxpayer reports a qualified charitable distribution (QCD) on the Form 1040 tax return, on line 15 (IRA distributions). In the space provided on line 15b, the taxpayer should insert "0" and write the words "qualified charitable distribution" or "QCD". {Depending on the 1040 Instructions, "The taxpayer should also enter on Schedule A, where indicated in the instructions for this Schedule, that a tax-free QCD has been issued and delivered to (indicate name)____."} No deduction can be taken for a QCD since the distribution has already been excluded from taxable gross income.

Q- WILL FINANCIAL INSTITUTIONS BE REQUIRED TO DO ADDITIONAL REPORTING FOR QCDs?

No. Financial institutions are only obligated to report the distributions from IRAs as "normal" (over the age 59 ½) or "premature" (prior to age 59 ½). There is no additional reporting requirement or a special distribution code for QCDs on the 1099-R.

Q- DOES AN IRA TRUSTEE OR CUSTODIAN HAVE AN OBLIGATION TO INVESTIGATE OR CONFIRM THE ELIGIBILITY OF A CHARITABLE ORGANIZATION TO RECEIVE QCDs?

No. A financial institution that receives instructions to make a payment to a charity does not have any obligation to confirm the qualified status of the receiving charitable organization, and/or whether the organization is a donor-advised fund or private foundation that by statute do not satisfy the definition of "qualified charitable organization."

Q- IS THE FINANCIAL INSTITUTION RESPONSIBLE TO NOTIFY THE RECEIVING CHARITY OF THE NAME AND ADDRESS OF THE DONOR?

No. The taxpayer is responsible to follow up with the charity and request substantiation for their donation. The taxpayer must have substantiation to claim the distribution as a QCD.

Q- WHAT ARE THE PERMISSIBLE METHODS TO TRANSFER FUNDS TO A CHARITABLE ORGANIZATION?

The taxpayer is permitted to make the contribution using any of the following methods – 1) a direct transfer from the financial institution to the charity, 2) the taxpayer's financial institution may issue a check payable to the charity but send it to the taxpayer so that the taxpayer may make arrangements for its delivery to the charity (as long as the check is not negotiable by the account owner), or 3) IRA accounts that have check-writing privileges may also be used for this purpose, provided the account holder otherwise satisfies the requirements for making the QCD and the charity is qualified. The Custodian would not be required to report any distribution intended as a QCD; it would be up to the taxpayer to make such a claim on line 15b of the Form 1040 and Schedule A.”

Q- IN ADDITION TO CASH, MAY A QCD BE MADE IN OTHER IN KIND PROPERTY SUCH AS SECURITIES?

Yes. QCDs may be made in the form of cash or in-kind property, such as stock. Taxpayers should be aware the securities fluctuate in value. The value on the day instructions are given to a financial institution may be different, (higher or lower price per share) on the date of distribution. The value on the date of distribution will be the value reported to the IRS. Taxpayers should also check with the intended charity to ensure they are equipped to receive securities donations prior to giving instructions to the financial institution.

Q- FOR DISTRIBUTIONS MADE PRIOR TO AUGUST 17, 2006, IF A TAXPAYER HAS ALREADY TAKEN AN IRA DISTRIBUTION FOR 2006, IS IT POSSIBLE TO CLAIM TAX-FREE TREATMENT FOR THAT DISTRIBUTION?

The distribution must have met all the requirements of a QCD in order for the taxpayer to claim tax-free treatment. For example, if the distribution was made by means of a check writing privilege where the check was made payable directly to a qualified charity, the taxpayer would be able to claim the exemption from taxable income on line 15b of Form 1040 and Schedule A as applicable. The Custodian in this regard would have no obligation to report the distribution as tax-free. If the distribution was issued to the taxpayer prior to August 17, 2006, QCD treatment would not be available as the taxpayer had constructive receipt and the distribution was not delivered in accordance with Q & A #_____ above.

Q- WHEN IS THE QCD DEEMED TO BE MADE?

A QCD is deemed to have been made as of the date of its issuance from the IRA by the Custodian. Thus, QCDs issued and mailed from an IRA account to a charity or taxpayer on behalf of a charity on

December 31 or earlier of any year shall be deemed to have been made in that year irrespective of whether the qualified charity is in receipt of such distribution amount as of the December 31 date. With regard to QCDs made by means of check writing; the check must have been written, signed and postmarked (or sent overnight using one of the IRS approved companies) by no later than December 31 of the year for the distribution to be treated as made for that year.

Q- DOES THE PROVISION APPLY TO DISTRIBUTIONS FROM OTHER TYPES OF IRAS?

A distribution from a "beneficiary" or "inherited" Traditional IRA would be eligible for tax-free, QCD treatment as long as the other requirements for QCD treatment were met such as the age requirement, the \$100,000 maximum limit, etc. A taxpayer may not claim tax-free, QCD treatment for distributions from SIMPLE or SEP IRAs. However, see next question regarding eligibility of SEP or SIMPLE IRA funds as a QCD.

Q- CAN FUNDS HELD IN AN IRA THAT IS LABELED AS A "SEP IRA BE TRANSFERRED TO A TRADITIONAL IRA AND THEN DISTRIBUTED AS A QCD?

Yes. Even though an IRA that is labeled as a SEP IRA can receive Traditional IRA contributions in addition to employer SEP contributions, QCD distributions can only be made from Traditional or Roth (see above) IRAs. Thus, SEP IRA funds would first need to be transferred from the SEP IRA to a Traditional IRA if a QCD is desired.

Q- CAN A DISTRIBUTION FROM A ROTH IRA BE CONSIDERED A QCD?

Yes, but only to the extent the distribution is a "non-qualified distribution" and the amount consists exclusively of taxable funds in accordance with the "ordering rules" governing Roth IRAs.

Q- CAN A QCD BE MADE FROM A TRUST THAT HAS INHERITED THE IRA BY BEING DESIGNATED AS IRA BENEFICIARY?

Yes, if the trustee is also the sole Beneficiary of the trust and the trust, by its terms, provides that the trustee (and sole beneficiary) of the trust has complete control over the disposition of the trust assets and allocation of same; said beneficiary is at least age 70 ½ and the distribution otherwise meets the requirements for QCDs,

Q- WHAT IS THE PENALTY IF A TAXPAYER CLAIMS A DISTRIBUTION IS A QCD BUT IT FAILS BECAUSE IT IS OVER THE \$100,000 CAP, ETC.

If a taxpayer excludes an amount in excess of \$100,000 from taxable gross income as reported on Form 1040; the taxpayer would be subject to the standard penalty and interest charges for the underreporting of taxable income

Q- WHO IS RESPONSIBLE FOR DETERMINING IF THE CHARITY IS A “QUALIFIED” CHARITABLE ORGANIZATION?

The taxpayer is responsible; the IRA Custodian is not responsible for determining or monitoring the qualified status of any charitable organization to which it directs payments upon a taxpayer's request.

Q- WHEN AN IRA CUSTODIAN REPORTS A QCD AS FULLY TAXABLE, DOES THAT PRECLUDE A TAXPAYER FROM CLAIMING THE DISTRIBUTION AS A QCD?

No, a taxpayer may still claim the distribution as tax free on Form 1040, line 15, if the distribution otherwise meets the requirements for QCDs. Taxpayers should refer to IRS Publication 590 for guidelines on QCDs, or consult a tax advisor for assistance in determining if their distribution is a QCD.

Q- CAN FUNDS HELD IN AN IRA THAT IS LABELED AS A “SIMPLE IRA” BE TRANSFERRED TO A TRADITIONAL IRA AND THEN DISTRIBUTED AS A QCD?

Yes but only if the funds have been in the SIMPLE IRA for at least 2 years from the employee's first date of participation which is deemed to be the first date that eligible employee contributes to the employer's Simple IRA plan.

Q- CAN QCDs BE APPLIED TO SATISFY A TAXPAYER'S REQUIRED MINIMUM DISTRIBUTION (RMD) OBLIGATION FOR THE YEAR?

Yes. Pursuant to current regulations, the first dollars out of any IRA account in any “distribution calendar year” as that term is defined in regulation 1.401(a)(9), are deemed to be the taxpayer's RMD until the full amount of the RMD for the year is satisfied. Thus any and all the QCDs a taxpayer has issued from his or her IRA in any distribution calendar year are first applied toward the satisfaction of the RMD obligation for the year up until the full amount of the RMD obligation is met for the year.

Q- IS THERE ANY MINIMUM AMOUNT FOR A QCD?

No. However, as a matter of operational policy, an IRA Custodian may establish a minimum dollar amount for processing QCD requests