



SUNY Planned Giving Newsletter

December 2010

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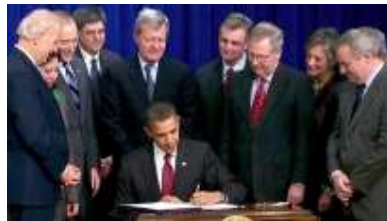
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President Signs Historic Tax Relief Act into Law

As 2010 winds to a close, Congress and the President finally reached an agreement on the extension President Bush's income tax rate cuts, unemployment benefits, the estate tax and a myriad of other provisions that had expired or were set to expire on December 31st.

Fundraising professionals need to be aware of the following significant changes that impact charitable giving immediately and that will impact planned giving programs for years to come.



Charitable IRA Rollover Extended for 2010 and 2011

Included in the Tax Relief Act, signed into law by President Obama on December 17th, is an extension of the Charitable IRA Rollover provision through the end of 2011.

The tax provision offers nonprofit organizations a wonderful opportunity to engage with donors between now and the end of the calendar year. There are several important points that charities and donors interested in this provision must be aware of:

- Individuals age 70 ½ and older may once again request direct transfers of funds from Individual Retirement Accounts (IRAs) to qualified public charities **without income tax on gifted funds.**
- The funds must be transferred directly from IRA accounts to the charities (donors should ask their IRA custodians for special forms to make these requests).
- Each individual is entitled to make a total of \$100,000 in gifts to charities each year under this provision.
- 2010 IRA rollover gifts can be made through January 31, 2011.
- **For those individuals who have not yet taken their IRA Required Minimum Distributions (RMDs) for 2010, they may partially or wholly satisfy that requirement through an IRA rollover gift made by January 31, 2011.**
- Since IRA rollover proceeds are not added to one's adjusted gross income, these contributions do not qualify donors for a charitable income tax deduction. Not being taxed on the withdrawal is worth even more than a standard charitable deduction.

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- Only standard IRAs and Roth IRA accounts qualify under this law; other retirement accounts such as 401(k), 403(b), SEP, KEOGH, and SIMPLE IRA plans cannot be used to make an IRA rollover gift.
- Donors of IRA rollover gifts cannot receive any personal benefits from this gift. IRA rollover gifts cannot be used to fund planned gifts such as charitable remainder trusts or gift annuities.

The provision is a significant opportunity for donors who:

- hold assets in their IRAs that they do not need;
- would like to make a large one-time gift;
- are subject to the 2% rule that reduces itemized deductions;
- do not itemize; or
- plan to leave part or all of their IRA to your organization at death.

If you would like assistance with discussing the Charitable IRA Rollover provision with your donors, please contact Jonathan Gudema at jgudema@changingourworld.com.

Estate Tax Law Overhaul

Trusts and estates attorneys, financial planners and even fundraisers have been anxiously waiting for something to happen with the estate tax for years. Actually, 10 years to be exact, as no one in the field believed we would ever reach a year of estate tax repeal – which we did in 2010.

Now that we have a change in the law, its incumbent on us to find out what we now have for an estate tax system.

The following is a summary of the relevant points from the Tax Relief Act for those working in or around the nonprofit community, particularly planned giving and major gift fundraisers:

- **This is only a two year fix.** Yes, in another two years we are going to be back where we started. The only question will be which party is in a better position to impose its will. Stay tuned for a rerun of the same planning uncertainty when 2012 winds down and we are again facing a return to the 2001 estate tax laws of 55% highest federal rate and lifetime exemption of \$1 million.
- **Husbands and wives, combined, can pass \$10 million to heirs without a penny of Federal estate tax (\$5 million per person estate tax exemption).** This sounds extremely generous but individuals always need to be wary of their home state's estate tax, which can be as much as 16% (like New York). The new tax law also reinstates something called the *State Death Tax Credit*, which is the equivalent of giving states a payment of 16% of federal estate taxes collected – which may spur many states to reduce or eliminate their current estate taxes.
- **Estate planning for spouses just became much simpler.** Under prior estate tax regimes, it was very important for couples with total assets above the lifetime exemption amounts to do careful estate planning to preserve each others' lifetime exemption. This typically required *marital exemption trusts* and/or separating ownership of joint assets. The Tax Relief Act now allows executors to apply any unused portions of a pre-deceased spouse's lifetime exemption toward the surviving spouse's estate. This greatly simplifies estate planning for spouses but individuals will need guidance from the estate planning community on practical applications of this new provision.

- **The “unified” gift and estate tax is unified again.** Individuals once again will have the option of gifting during life or waiting until their passing to use up the \$5 million lifetime estate/gift tax exemption. Additionally, the law unifies the generation skipping tax with estate and gift taxes. In theory, this means that a grandparent can gift up to \$5 million to grandchildren without incurring any gift, estate or generation skipping tax liability. The tax rate for all three types of taxable gifts, once the \$5 million exemption is used up, is 35%. It is worthwhile to note that many individuals may be advised to make generational transfers under the \$5 million exemption during this two year window – with the potential for more uncertainty looming ahead.

While these points may seem applicable only to non-charitable estate plans, the nonprofit world should be informed of these law changes for several reasons. Firstly, donors will want to hear from planning professionals about the new state of estate taxes so there will be opportunities to bring your supporters together for seminars on related topics. Secondly, donors will be revisiting their estate plans, presenting a good opportunity to be included in a donor’s estate plan. Lastly, education of donors in the best practices of estate planning – one of the prime planned giving marketing techniques – will be more relevant than ever in ensuring that charitable intents are realized.