

NONPROFIT ORGANIZATIONS

ALERT

JANUARY
2013CHARITABLE GIVING UNDER THE
AMERICAN TAXPAYER RELIEF ACT OF 2012

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On January 2, 2013, President Obama signed into law the “American Taxpayer Relief Act of 2012” (ATRA). In this *Alert*, we explore the good news and the bad news that charitably minded individuals received with the passage of ATRA.

Bad News

Let’s start by getting the bad news out of the way. ATRA revived the itemized deduction limitations, also known as the “Pease Amendment” (named after Congressman Donald Pease, the amendment’s proposer in the 1990s). Under Pease, total itemized deductions are reduced by 3 percent not to exceed 80 percent, of the amount the taxpayer’s adjusted gross income exceeds the threshold amount — \$250,000 for single filers, \$275,000 for heads of household and \$300,000 for married filing jointly (indexed for inflation). Charitable deductions are included in the limitation equation.

Depending on the taxpayer’s income level and other deductions, this limitation could adversely affect charitable contributions. For example, consider a married couple with \$60,000 of itemized deductions (\$25,000 mortgage interest, \$10,000 state taxes and \$25,000 charitable deduction) and an adjusted gross income of \$450,000. The couple’s adjusted gross income exceeds the threshold by \$150,000. The couple must reduce their total itemized deductions by 3 percent of \$150,000 or \$4,500.

The other bad news is that two charitable deductions were not extended: 1) contributions of book inventories to public schools; and 2) corporate contributions of computer inventory.

Good News

One piece of good news is that under ATRA, once again, individuals 70½ years of age or older may make tax-free IRA distributions to charitable organizations. The maximum distribution amount is \$100,000 per individual, per tax year.

ATRA also creates an opportunity to retroactively apply an IRA distribution to the 2012 tax year. Individuals 70½ years of age or older who make a qualified distribution from an IRA in January 2013 may elect to have the distribution applied to the 2012 tax year. Further, an individual 70½ years of age or older who took a distribution from an IRA in December 2012, and made a cash contribution to a charity after such distribution and before February 1, 2013, may have the cash contribution applied to the 2012 tax year.

The IRA contribution good news is tempered by the fact that, under ATRA, this is not a permanent opportunity. The tax-free IRA contribution is allowable only for tax years 2012 and 2013.

In addition to the IRA contribution, ATRA extended several other beneficial tax provisions. Highlights include:

Conservation Easement Contributions. A taxpayer may make a contribution of appreciated real property to a charity and take a charitable deduction of up to 50 percent of the taxpayer’s contribution base (adjusted gross income exclusive of net operating loss carry back) over the amount of other charitable contributions. The real property must be donated for conservation purposes.

Food Inventory Contributions. Taxpayers engaged in a trade or business may take a deduction for donations of “apparently wholesome food” (intended for human consumption). The deduction is limited to 10 percent of the taxpayer’s aggregate net income for the tax year from all trades or businesses that participated in the contribution.

S Corporation Property Contributions. Without ATRA, if an S Corporation donated property, a shareholder of the S Corporation would have reduced his/her shareholder’s basis by the pro rata share of the contributed property’s fair market value. Under ATRA, the shareholder taxpayer only must reduce his/her shareholder’s basis by the pro rata share of the S Corporation’s basis in the contributed prop-

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erty. This allows a greater benefit to the taxpayer from the contributed property.

Planning

Charitable giving comes in many forms — outright or in trust, during life or at death. Individuals making lifetime outright gifts continue to be good stewards of their communities and benefit from a charitable tax deduction. The itemized deduction limitations, however, may make outright annual gifting less attractive for some individuals. For these individuals, a donation of appreciated stock may be attractive.

By contributing appreciated stock, a taxpayer may avoid the increased capital gains rate of 20 percent and the new 3.8 percent Medicare tax and minimize his/her Pease reduction.¹ This is because the appreciated stock was transferred without a sale, so a capital gain is not triggered and the taxpayer's adjusted gross income is reduced. A lower adjusted gross income generally means fewer lost itemized deductions.

A taxpayer may also want to consider a split interest trust. For example, due to the higher income tax rates, 40 percent gift tax rate² and a low Section 7520 interest rate (which is used to calculate how much the IRS expects the trust assets to appreciate), it is a great time for charitable lead trusts. A charitable lead trust is a trust that makes payments to a charitable organization for a set period of time. At the end of the trust term, the remaining assets are distributed to one or more non-charitable beneficiaries, typically family members. The current low Section 7520 rate causes the present value of the charity's annuity to be higher, potentially allowing for a larger charitable deduction while decreasing the taxable gift to the non-charitable remainder beneficiaries. ♦

1. For more information on these taxes under ATRA, see our *Alert*, "[2013 Brings New Taxes to High Income Taxpayers.](#)"

2. For more information on the ATRA's impact on estate, gift and GST taxes, see our *Alert*, "[2013 Brings Estate, Gift & GST Tax 'Permanency' At Last.](#)"

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To learn more about raising or managing charitable contributions, including providing substantiation documentation, negotiating or removing donor-imposed restrictions, or offering corporate sponsorship or planned giving opportunities, please contact an attorney in our Nonprofit Organizations Practice Group:

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