



# Client Alert

January 7, 2011

## TEMPORARY RETURN OF THE "CHARITABLE IRA ROLLOVER"

The so-called charitable IRA rollover is back.

For years 2006 to 2009 distributions from an IRA of a taxpayer who had attained age 70 ½ to certain public charities could be made on a tax-free basis. Specifically, a taxpayer could exclude from gross income so much of the aggregate amount of the taxpayer's "qualified charitable distributions" as did not exceed \$100,000 in a year.

A "qualified charitable distribution" is any otherwise taxable distribution from a traditional IRA or a Roth IRA that is made directly by the IRA trustee to certain public charitable organizations. Private foundations, supporting organizations and donor advised funds may not be the recipient of such distributions.

Furthermore, these qualified charitable distributions may be used to satisfy a taxpayer's required minimum distribution (RMD) from IRAs.

The 2010 Tax Relief Act extends these rules to 2010 and 2011. *Furthermore, there is a special election for distributions made in January, 2011.* Any qualified charitable distribution made this month will be deemed to have been made on Dec. 31, 2010, if the IRA owner so elects, for both the tax-free qualified charitable distribution and RMD rules.

Thus, a qualified charitable distribution made in January, 2011 may be (a) treated as made in 2010 and thus will count against the 2010 \$100,000 limitation on the exclusion, and (b) used to satisfy the taxpayer's RMD for 2010.

If a taxpayer has already received his or her RMD for 2010 and is still within the 60 day window to roll it over into an IRA or qualifying retirement plan, the taxpayer could do the rollover. Then the taxpayer could direct distribution of the RMD up to \$100,000 to a qualifying charity, but it must be done this month. If the 60 day window for a rollover has already passed, a taxpayer may still make a non-taxable distribution to a charity this month of up to \$100,000 and count the distribution as if made in 2010. The taxpayer, however, will still have to recognize as income any distributions received from the IRA in 2010. As a result, the only advantage to the taxpayer in making a qualified charitable distribution this month in this situation is that it does not have to count against the taxpayer's \$100,000 limit for qualified charitable distributions for 2011.

Please remember:

- The taxpayer has to be at least 70 ½ when the distribution is made
- The distribution is not deductible as a charitable contribution
- Distributions from a qualified retirement plan like a 401(k) plan or a SEP are not eligible for this special treatment; only distributions from IRAs qualify
- Only certain types of charities may be the recipient of a qualified charitable distribution
- The distribution must be made directly to the charity
- The taxpayer may not receive any *quid pro quo* for the distribution

### **IRS Circular 230 Notice**

Internal Revenue Service regulations state that only a formal opinion that meets specific requirements can be used to avoid tax penalties. Any tax advice in this communication is not intended or written to be used, and cannot be used by a taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer, because it does not meet the requirements of a formal opinion.

For more information, please contact an attorney in the Armstrong Teasdale Tax Department:

**Jonathan W. Igoe** / 314.342.8019  
jigoe@armstrongteasdale.com

**Scott E. Hunt** / 314.342.4145  
shunt@armstrongteasdale.com

**Daniel J. Cooper** / 314.259.4715  
dcooper@armstrongteasdale.com

**Joseph D. Demko** / 314.342.4143  
jdemko@armstrongteasdale.com

**Guy Schmitz** / 314.259.4738  
gschmitz@armstrongteasdale.com

**Robert L. Jackson** / 314.342.8076  
rjackson@armstrongteasdale.com

**Larry M. Sewell** / 314.342.8020  
lsewell@armstrongteasdale.com

**Christopher J. Anderson** / 816.472.3117  
canderson@armstrongteasdale.com

**John E. Dooling, Jr.** / 314.259.4743  
jdooling@armstrongteasdale.com

**Jill M. Palmquist** / 314.552.6635  
jpalmquist@armstrongteasdale.com

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