

## *Planned Giving News*

SECOND QUARTER 2007

### PUBLIC GOOD IRA ROLLOVER ACT OF 2007

*by Ken Dike*

**I**dentical bills have been introduced in both the US Senate and House of Representatives that would allow for tax-free IRA rollovers to a charitable remainder trust, pooled income fund, or charitable gift annuity (life-income funds) for IRA owners at least age 59 1/2. These bills would also allow for tax-free IRA rollovers for outright gifts where the IRA owner is at least age 70 1/2. There is no maximum amount that may be rolled-over and the bills have no expiration date. Lastly, all types of charities would be permissible recipients of the IRA funds.

#### **CURRENT LAW**

As was discussed in our third quarter 2006 newsletter, the "Pension Protection Act of 2006" was signed into law on August 17, 2006. Under section 1201 of this law, direct transfers up to \$100,000 per taxpayer, per year by an IRA manager to a public charity during 2006 and 2007 need not be recognized as taxable income to the IRA owner/donor who is at least 70 1/2. Since this charitable rollover of IRA funds is not included as taxable income by the IRA owner, there is no corresponding charitable deduction available to the donor.

Accordingly, the charitable rollover of IRA funds can no longer result in any increased federal tax liability due to the donor surpassing their 50% AGI ceiling on charitable donations and other limitations on the total amount of itemized deductions that may be in effect. Furthermore, the IRA funds transferred to charity qualify for the owner's required minimum IRA distribution.

To qualify for this favorable tax treatment, IRA rollovers must be made to Sec. 509(a)(1) and Sec. 170(b)(1)(A) "public" charities. Excluded from the category of permissible charities are Sec. 4966(d)(2) donor advised funds, Sec. 509(a)(3) supporting organizations, and private foundations that are not private operating foundations or passthrough foundations. A supporting organization is a charity created to support a "public" charity or charities. Although supporting organizations are often created by a single individual or family, they are classified as "public" charities instead of private foundations if they satisfy certain organizational and governance requirements that insure oversight by the public charity being supported. A private operating foundation is a type of private foundation

that uses the bulk of its income to actively run its own charitable activities such as a museum or library while a passthrough foundation distributes all of the gifts it receives each year to "public" charities.

The transfer must be an "outright" gift. Transfers to life income funds such as charitable remainder trusts and pooled income funds, or purchases of gift annuities do not qualify. The transfer may be "unrestricted" to be used in support of the general charitable purposes of the charity or may be "restricted" to a specific charitable purpose such as professorships, fellowships, scholarships or earmarked for a specific disaster relief.

The transfer must be from a traditional individual retirement account or Roth IRA. Distributions from employer-sponsored retirement plans such as Simple IRAs, 401(k), and 403(b) plans do not qualify.

#### **PROPOSED LAW**

The "Public Good IRA Rollover Act of 2007" was recently introduced in the Senate (S. 819) by lead co-sponsors Byron L. Dorgan (D-ND) and Olympia J. Snowe (R-ME), and in the House (H.R. 1419) by lead co-sponsors

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**IDENTICAL BILLS HAVE BEEN INTRODUCED IN BOTH THE US SENATE AND HOUSE  
OF REPRESENTATIVES THAT WOULD ALLOW FOR TAX-FREE IRA ROLLOVERS TO A  
CHARITABLE REMAINDER TRUST, POOLED INCOME FUND OR CHARITABLE GIFT ANNUITY...  
FOR IRA OWNERS AT LEAST AGE 59 1/2.**

*Public Good IRA Rollover Act of 2007  
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Earl Pomeroy (D-ND) and Wally Herger (R-CA). The status of both bills, including a full list of all co-sponsors, can be tracked through the Library of Congress at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s.00819>: (Senate bill) and <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR01419>: (House bill).

In addition to tax-free IRA transfers to charity for outright gifts where the IRA owner is at least age 70 1/2, which is permitted by the current law, the bills would:

- Make the tax-free rollover of IRA funds permanent by eliminating the 12/31/2007 expiration date of the current law.
- Allow for an unlimited amount that could be transferred tax-free from an IRA to charity by removing the \$100,000 per taxpayer, per year ceiling in the current law.
- Eliminate the current law's restrictions on transfers to Sec. 509(a)(3) supporting organizations and Sec. 4966(d)(2) donor advised funds making all charities, including private foundations, eligible recipients of the tax-free IRA transfer.
- Permit tax-free rollovers to life-income funds (split-interest gifts) such as charitable remainder annuity trusts, charitable remainder unitrusts, pooled income funds, and charitable gift annuities. Transfers to life-income funds, which are not permitted by current law, would be available to IRA owners at least age 59 1/2. In addition to a charity, the permissible income beneficiaries of these life-income funds include the IRA

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owner/donor, their spouse, or both. All of the distributions received by the income beneficiary would be characterized as ordinary taxable income to the recipient regardless of other provisions in the tax code such as the four-tier characterization of distributions from charitable remainder trusts and the exclusion ratio approach for gift annuities.

**BENEFITS TO THE CHARITABLY-INCLINED**

The current law, as well as the proposed expanded law, provides all charitably-inclined taxpayers a tax benefit; not just the approximately one-third of taxpayers who itemize deductions. Excluding from taxable income transfers from an IRA to a charity instead of reporting such transfers as taxable income and then taking a corresponding charitable itemized deduction, is the same as giving a non-itemizer an additional

tax incentive for their charitable gifts. Also, with over several trillion dollars in IRAs, the potential for increased charitable giving is staggering.

It has been estimated that during the last 4 1/2 months of 2006, when the current "Pension Protection Act of 2006" was in effect, almost \$250 million could have been transferred from IRAs for outright gifts (life-income funds were not allowed) to U.S. higher educational institutions alone. This estimate is based on a recent survey by the Council for Advancement and Support of Education (CASE) finding that 2006 IRA gifts constituted from 2.1% to 2.9% of total giving by individuals to higher education. Regardless of the actual 2006 IRA gifts, nobody doubts that it was significant. This is especially true given the relatively short lead time during 2006 in which to inform prospective donors of this unique giving opportunity. The 2007 ratios of IRA giving to total giving will certainly be higher than in 2006.

Allowing tax-free IRA transfers to life-income funds, which would provide for lifetime income to the donor and an eventual gift to charity, would entice donors who are hesitant to part entirely with their IRA assets. In a way, the IRA owner who planned to live off the earnings from their IRA would simply be changing the "holder" of the retirement funds from an IRA custodian to a charitable trust or to a charity itself in the case of a gift annuity. **\$**

**ALLOWING TAX-FREE IRA TRANSFERS TO LIFE-INCOME FUNDS...WOULD ENTICE DONORS WHO ARE HESITANT TO PART ENTIRELY WITH THEIR IRA ASSETS.**

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