

## insights

TYPES NOT MAPPED YET March 31, 2020 | TTR not mapped yet | Lawrence P. Katzenstein, Jacqueline A. Dimmitt, Steve B. Gorin, Richard L. Lawton

# CARES Act implications for charitable giving during COVID-19

The save-the-economy CARES Act passed by Congress and signed by the President on March 27 includes a wide variety of provisions designed to rescue an economy brought to its knees by the coronavirus pandemic. Recognizing that charitable giving to a myriad of organizations will suffer in the current economic environment at a time when charitable support of so many activities is of critical importance, the Act includes several provisions to encourage charitable giving.

### Above the line charitable deduction

Section 2204 of the Act amends the Internal Revenue Code by adding new § 62(a)(22), allowing taxpayers who do not itemize deductions to deduct up to \$300 for certain charitable gifts made in 2020. The contribution must be made in cash to a public charity other than a supporting organization or donor advised fund. Only contributions actually made in 2020 qualify, so excess cash contributions carried over from a prior year and treated as made in 2020 are not eligible. Although the amount is small, it is better than nothing—especially since so few people itemize now that the deduction for state and local taxes is limited to \$10,000. Even better would be a permanent charitable deduction for non-itemizers subject to the same percentage limitations that apply to taxpayers who itemize deductions.

### Suspension and relaxation of percentage limitations for cash gifts

The other and more important provision to encourage charitable giving is made by Act section 2205 which eliminates the Code § 170 percentage limitations on most cash gifts to public charities. Under the law in effect prior to this change, contributions of cash to a public charity were limited to 60% of adjusted gross income. (Because of a drafting error in the 2018 tax legislation, it appears that the 60% percentage limitation is only allowable to taxpayers making no noncash contributions in the same year. It was expected this would be fixed in technical corrections but that has not yet happened.) As with the \$300 “above-the-line” deduction discussed above, the suspension of percentage limitations for cash contributions does not apply to gifts to supporting organizations or donor advised funds. Finally, if a contribution exceeds a donor’s adjusted gross income, the excess can be carried over to subsequent years, but subject to the percentage limitations in the carryover years.

A similar change was made to charitable contributions by corporations. Under the law prior to 2020, charitable contributions made by a corporation could not exceed 10% of taxable income with certain adjustments. This has been increased to 25% by the Act for cash contributions made in 2020. With respect to both individual and corporate cash contributions, the increased deduction is not automatic, but must be elected. There will undoubtedly be further guidance from the Internal Revenue Service when the time comes to file 2020 tax returns.

### Planning strategies with suspension of percentage limitations for cash gifts by individuals

What strategies should donors consider given the temporary elimination of percentage limitations for certain cash contributions? Gifts of securities are not “qualified charitable contributions.” A donor with securities which have declined in value below cost may wish to sell those securities, realize the capital loss and contribute the cash without regard to percentage limitations. Or the capital loss may be used to offset gain on sale of appreciated assets, again generating cash that can be used for charitable contributions without percentage limitations. Even if a donor recognizes capital gain, donating the sale proceeds could eliminate taxation of any ordinary income, leaving only capital gains to be taxed. It appears that a taxpayer can actually eliminate any taxable income tax this year by making sufficiently large cash charitable contributions.

One final charitable change in the Act increases the limits on contributions in 2020 of certain food inventory under Code § 170(e)(3)(C) from 15% to 25%.

## Charitable implications of suspension of qualified plan required minimum distributions

Note that the CARES Act also made several changes to retirement plan distributions, which may affect charitable giving. Section 2203 of the Act suspends required minimum distributions (RMDs) from most qualified retirement plans, including IRAs. This could reduce the incentive to make charitable distributions from IRAs in 2020. (The IRA charitable rollover remains available in 2020.) For example, the best strategy for a taxpayer with an RMD of \$100,000 who usually makes \$50,000 in IRA charitable rollover gifts each December may be to make no IRA charitable gift in 2020 and make \$50,000 rollover gifts in January and December 2021.

On the other hand, because of the unlimited charitable deduction allowed for cash gifts to charity this year, a taxpayer can in effect make a tax free rollover of any amount to charity in 2020 by making a taxable withdrawal from an IRA that will be included in income, giving the cash to a public charity and offsetting the income completely by the charitable deduction, regardless of the amount. This may present real opportunities for charities and donors. For all years other than 2020, the only way to transfer a large IRA to charity without tax was at death by beneficiary designation. But in 2020 the IRA can sell its assets and distribute the cash proceeds to the IRA holder, who can then give them to charity and deduct them in any amount without regard to percentage limitations. It might have been even simpler if Congress had simply suspended the \$100,000 limit on IRA charitable rollovers for 2020.

The attorneys in Thompson Coburn's [Private Client practice group](#) are available to answer your specific questions about charitable giving as you respond to the current public health crisis. For any questions, please contact one of the attorneys listed below or your regular contact at Thompson Coburn.

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