

Qualified Charitable Distributions from Individual Retirement Accounts: Features and Legislative History

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Summary

A provision of the Pension Protection Act of 2006 (P.L. 109-280) allows tax-free distributions from Individual Retirement Accounts (IRAs) for charitable purposes. This Qualified Charitable Distribution (QCD) provision is available to taxpayers aged 70½ or older and allows them to make contributions directly to a qualified charity while excluding the distribution from their taxable income.

The provision initially expired on December 31, 2007. Subsequent legislation has extended this provision on a one- or two-year basis, generally as part of a *tax extenders* bill. Tax extenders are temporary tax provisions that are regularly extended for one or two years.

The provision was initially extended until December 31, 2009, by P.L. 110-343, signed by President George W. Bush on October 3, 2008. The provision was extended through December 31, 2011, by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312), signed by President Barack Obama on December 17, 2010. A provision in the American Taxpayer Relief Act of 2012 (P.L. 112-240) signed by President Obama on January 1, 2013, extended this provision through December 31, 2013. Most recently, H.R. 5771 (P.L. 113-295) extended this provision through December 31, 2014.

To date, the Congressional Research Service has identified three bills in the 114th Congress that would further extend or make permanent the QCD provision. H.R. 2157 would extend the provision through 2015, and H.R. 637 and S. 1159 would make the QCD provision permanent.

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Qualified Charitable Distributions

Distributions from Individual Retirement Accounts (IRAs) must be included in gross income in the year the distribution occurs, and income taxes must be paid on the taxable portion of the distribution. Section 1201 of the Pension Protection Act of 2006 (P.L. 109-280) allows individuals aged 70½ and older to exclude from gross income distributions from Individual Retirement Accounts (IRAs) if they are made to a qualified charity.¹

The features of this Qualified Charitable Distribution (QCD) are as follows:

- Contributions must be from traditional or Roth IRAs. QCDs cannot be made from employer-sponsored IRAs (Simplified Employee Pensions (SEP-IRAs) and Savings Incentive Match Plan for Employees (SIMPLE-IRAs) or from defined contribution retirement plans (e.g., 401(k) plans or 403(b) plans);
- Individuals must be older than 70½ when the QCD is made;
- Charities must be eligible to receive tax-deductible charitable contributions;
- The maximum QCD is \$100,000, although a spouse can also make a \$100,000 QCD if the couple files a joint income tax return;
- The \$100,000 maximum QCD does not apply to the overall charitable deduction limit.² Thus, individuals may make charitable contributions in excess of 50% of adjusted gross income;
- The distribution must be a trustee-to-trustee transfer; that is, a direct transfer from the IRA to the charity; and
- The distribution first comes from taxable funds, then from any nondeductible IRA contributions, which allows for a larger amount of nondeductible (and, therefore, nontaxable) funds to remain in the IRA for later distributions by the individual. Without this feature, distributions would have to be allocated proportionately between deductible and nondeductible contributions.

The QCD allows taxpayers aged 70½ or older to exclude IRA distributions that are transferred directly to a charity from their gross income. Absent the QCD, some taxpayers could achieve the same result by including the IRA distribution in gross income, donating the distribution to a charity, and taking a tax deduction for the donation. However, taxpayers who do not itemize their tax deductions or whose charitable contributions exceed 50% of their gross income would not benefit, as they do from the QCD.³

This provision expired on December 31, 2014. Legislation has been introduced to extend the QCD provision.

¹ See CRS Report RL33703, *Summary of the Pension Protection Act of 2006*, by (name redacted)

² Deductions for charitable contributions are generally limited to 50% of a taxpayer's gross income. See Internal Revenue Service, *Charitable Contributions*, Publication 526, <http://www.irs.gov/pub/irs-pdf/p526.pdf>.

³ Further analysis of the QCD is available in U.S. Congress, House Committee on Ways and Means, *Permanent IRA Charitable Contribution Act of 2014*, report to accompany H.R. 4619, 113th Cong., 2nd sess., June 26, 2014, H.Rept. 113-496 (Washington: GPO, 2014). and Joseph Rosenberg and Katherine Toran, *IRA Charitable Rollover*, Urban-Brookings Tax Policy Center, Issue Brief Number 1, Washington, DC, August 2012, <http://www.urban.org/UploadedPDF/412634-IRA-Charitable-Rollover.pdf>.

Legislation to Extend the Qualified Charitable Distribution Provision

The provision has been renewed on a one- or two-year basis as part of *tax extenders* legislation. Tax extenders are temporary tax provisions that are regularly extended for one or two years and are often passed near the end of the tax year.⁴

Because of cost considerations, the provision is generally renewed for one or two years rather than made permanent. For example, the 1-year extension that was signed into law in December 2013 was estimated to have a 10-year cost of \$384 million,⁵ whereas H.R. 637 in the 114th Congress, which would make the provision permanent, is estimated to have a 10-year cost of \$8.8 billion.⁶

Legislation Introduced in the 114th Congress

H.R. 637, the Permanent IRA Charitable Contribution Act of 2015, which was introduced by Representative Aaron Schock on February 2, 2015, would make the QCD provision permanent. The bill was approved by the House Committee on Ways and Means by a vote of 24-14 on February 4, 2015, and placed on the Union Calendar for further consideration by the House of Representatives. The Joint Committee on Taxation (JCT) estimated that this provision would result in a revenue loss of \$400 million from FY2015 to FY2020 and \$8.8 billion from FY2015 to FY2024.⁷

Two other proposals in the 114th Congress have not been reported out of their respective committees of jurisdiction.

S. 1159, the Public Good IRA Rollover Act of 2015, introduced by Senator Chuck Schumer on April 30, 2015, would, among other provisions, make the QCD provision permanent.

H.R. 2157, introduced by Representative Alan Grayson on April 30, 2015, would extend the QCD provision by one year, through 2015.

Legislation Enacted in the 111th Through 113th Congresses

This provision for QCDs had expired on December 31, 2007. P.L. 110-343 extended this provision until December 31, 2009. H.R. 4853, which passed the Senate on December 15, 2010, and the House on December 16, 2010, extended the QCD provision until December 31, 2011. H.R. 8, the American Taxpayer Relief Act of 2012 (P.L. 112-240), extended the QCD provision until December 31, 2013. Most recently, H.R. 5771 (P.L. 113-295) extended this provision

⁴ For more information on tax extenders, see CRS Report R43517, *Recently Expired Charitable Tax Provisions ("Tax Extenders")*: In Brief, by (name redacted) and (name redacted) .

⁵ See Joint Committee on Taxation, Estimated Revenue Effects Of H.R. 5771, The "Tax Increase Prevention Act Of 2014," Scheduled For Consideration By The House Of Representatives On December 3, 2014, JCX-107-14R, December 3, 2014, <https://www.jct.gov/publications.html?func=startdown&id=4677>.

⁶ See U.S. Congress, House Committee on Ways and Means, *Permanent IRA Charitable Contribution Act of 2015*, committee print, 114th Cong., 1st sess., H.Rept. 114-20.

⁷ U.S. Congress, Joint Committee on Taxation, Description of H.R. 637, A Bill to Make Permanent the Rule Allowing Certain Tax-free Distributions from Individual Retirement Accounts for Charitable Purposes, 114th Cong., 1st sess., February 3, 2015, JCX-6-15.

through December 31, 2014. To date, the 114th Congress has not enacted legislation addressing the issue.

During the 111th, 112th, and 113th Congresses, a number of bills were introduced to extend the QCD provision for one or more years or to make it permanent. Legislation to extend the provision was enacted in 2010, 2012, and 2014.

Signed into Law in the 111th Congress

Representative James Oberstar introduced H.R. 4853 on March 16, 2010, as the Federal Aviation Administration Extension Act of 2010. The bill passed the House on March 17, 2010; passed the Senate, with amendments, on September 23, 2010; and passed the House, with amendments to the Senate amendments, on December 2, 2010.

H.R. 4853 became the legislative vehicle used to extend the income tax rates that were scheduled to expire on December 31, 2010. The provision to extend the QCD through December 31, 2011, was included as Section 725 of the Senate amendment to H.R. 4853 (S.Amdt. 4753), which passed the Senate on December 15, 2010. The provision required that QCDs made from January 1, 2011, to February 1, 2011, be deemed to have been made on December 31, 2010. The House passed H.R. 4853, as amended by the Senate, on December 16, 2010. President Barack Obama signed H.R. 4853 into law on December 17, 2010.

Signed into Law in the 112th Congress

Section 208 of P.L. 112-240, the American Taxpayer Relief Act of 2012, extended the QCD provision through December 31, 2013. H.R. 8 was the legislation used to avert scheduled income tax rate increases and the spending reductions required by the sequestration process. The JCT estimated that this provision would result in a revenue loss of \$1.0 billion in FY2013 to FY2017 and \$1.3 billion in FY2013 to FY2022.⁸ P.L. 112-240 contained a provision that allowed QCDs made between January 1, 2013, and February 1, 2013, to be treated as if made in 2012. Prior to the passage of P.L. 112-240, the QCD had expired on December 31, 2011, and some taxpayers may have not made a QCD in 2012 because of uncertainty regarding whether it would be applicable for 2012 QCDs.⁹

Signed into Law in the 113th Congress

Section 108 of P.L. 113-295, which, among other provisions extended certain expiring tax provisions, extended the QCD provision through December 31, 2014. The JCT estimated that this provision would result in a revenue loss of \$295 million in FY2015 to FY2019 and \$384 million from FY2015 to FY2024.¹⁰

⁸ See U.S. Congress, Joint Committee on Taxation, *Estimated Revenue Effects Of The Revenue Provisions Contained In An Amendment In The Nature Of A Substitute To H.R. 8, The "American Taxpayer Relief Act Of 2012,"* 112th Cong., 2nd sess., January 1, 2013, JCX-1-13.

⁹ The transition rule stated that any portion of a distribution from an IRA that was made after November 30, 2012, and before December 31, 2012, may be treated as a QCD if (1) the transfer is made to an eligible charity before February 1, 2013, and (2) the transfer would otherwise have been a QCD but for the fact that it was not transferred directly to a charity. For more information, see "Charitable Donations from IRAs for 2012 and 2013," available at <http://www.irs.gov/Retirement-Plans/Charitable-Donations-from-IRAs-for-2012-and-2013>.

¹⁰ U.S. Congress, Joint Committee on Taxation, *Estimated Revenue Effects Of H.R. 5771, The "Tax Increase Prevention Act Of 2014," Scheduled For Consideration By The House Of Representatives On December 3, 2014,* 113th (continued...)

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Cong., 2nd sess., December 3, 2014, JCX-107-14 R.

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