

One Charitable benefit expires, but others remain

End of IRA allowance still leaves donors with options including trusts

BY WILLIAM JASON
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NORTH BAY - Charitable giving remains a useful tool for estate planning despite the expiration of a provision that included extra tax benefits for older donors, according to planners.

The Pension Protection Act of 2006 included a provision that allowed Americans age 70 1/2 and older to donate up to \$100,000 per year to nonprofits as direct distributions from their individual retirement accounts. Such distributions carried multiple benefits because they counted toward an IRA's minimum annual distribution requirements, helped lower the value of the donor's estate, and were also automatically subtracted from the donor's total income for tax purposes. However, the provision was only valid for donations made before Dec. 31.

Charitable giving still has a number of benefits for both long-term estate planning and short-term tax strategy, according to Jim Lamping, an attorney in the Napa and Fairfield offices of Gaw Van Male.

"With the estate tax being at 45 percent, many people would prefer to benefit their favorite charity as opposed to their least favorite charity, which is the IRS," Mr. Lamping said. "It's possible to maximize benefits to non-charitable beneficiaries through a combination of charitable giving techniques."

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Now, donors who want to use charitable giving in their estate planning should look to use sources other than IRAs, according to Mr. Lamping.

"Usually, an IRA is a difficult thing to plan with just because of the income tax consequences," Mr. Lamping said. "Without having some relief provisions in place, an IRA is usually not a good asset to use for charitable giving."

Cash and other liquid assets - particularly those taxed as capital gains - are good sources to start with for charitable donations. Donating stock is an especially attractive option because of the tax benefits, according to Amy Smith, a tax partner with O'Dowd, Franklin, Rabanal & Smith LLP in Napa. A person donating a stock that has appreciated in value pays no taxes on the appreciation, but can take a tax deduction for the full market value of the stock at the time of the donation.

"It gives you an immediate tax deduction and if you can't use it all, it carries forward for five years," Ms. Smith said.

Another vehicle that is useful for people with larger estates is the charitable remainder trust, according to Ms. Smith. Charitable trusts are funds that make regular payments to designated beneficiaries for a fixed period of time or life. Whatever is left at the end of that period is donated to a charity.

Charitable trusts allow the donor to take immediate tax deduction and help reduce the value of a donor's estate, while allowing the money to continue to grow. If the money grows enough, the charity will receive the entire principal even after all of the payments have been made to beneficiaries.

Beneficiaries have to pay income taxes on the payments they receive, but even the highest marginal rate of 35 percent is 10 percentage points below the 45 percent estate tax, which would otherwise be levied if the money were bequeathed upon death.

Individuals who don't have cash for a large trust but who own land can find a good alternative in a conservation easement. By granting an easement to a land trust, a donor retains ownership of his property but agrees not to develop it.

Conservation easements help reduce estate taxes based on the land's value when it is passed to heirs upon death, they provide an immediate income tax deduction and they can also help lower property taxes. If money is still owed on the property, a landowner must check that the easement doesn't push the property's value below lending requirements.

"These are for people who have high net worth," Ms. Smith said. "You may need to check with your bank to make sure they'll accept this."

According to Ms. Smith, the best vehicle for charitable giving depends on the age, financial position and goals of the donor.

"It is fairly complex planning," she said. "There are techniques where you can benefit both charities and your family members if you're charitably inclined."



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