New Legislation Positively Impacts Charitable Giving

The Consolidated Appropriations Act of 2023 has now been signed into law by President Biden. Contained in the legislation is the Secure Act 2.0, which addresses many issues related to retirement planning. Most importantly for charities, it expands the definition of qualified charitable distributions (QCDs) and begins indexing the direct gift amount of $100,000 for inflation starting in 2024.

Beginning in 2023, the definition of qualified charitable distributions is expanded to include certain distributions to create life income gifts, specifically charitable gift annuities (CGA) and charitable remainder trusts. (CRT).

In addition to the ability to make gifts through a QCD of $100,000 a year directly to charity, the bill allows IRA owners to make a one-time distribution for a CGA or CRT. This is limited to a maximum of $50,000, and although not limited to a single gift, must be completed in a single year and only once during the lifetime of the IRA owner. These must be CGAs and CRTs that qualify for a charitable deduction under current law.

A few quirks about this law. First, all payments made to the recipients must be fully taxable. This is generally the case for a CRT, but CGA payments are generally partially tax-free, so this is an important difference.

These distributions must be made to a trust or annuity funded only with IRA assets. So existing trusts could not receive additional contributions from IRAs. Only new CRTs would qualify.

Also, the statute says CGA payments must be at least 5%. This differs from current CGA rules, which set payment based on age and may be less than 5%. Although not an issue today, since CGA rates for those 70 1/2 or older are currently over 5%, CGA rates change with economic conditions, which could be an issue in the future.

Multiple life payments are limited to the IRA owner and their spouse and must be non-assignable. Payments must begin no later than one year from the date of funding, disqualifying Deferred CGAs.

Within the retirement provisions of the Act, the current required age of 72 to take taxable withdrawals is changed to 73 in 2023 and raised to 75 by 2033. This will have an effect on which persons making QCDs will be able to count the distribution against RMDs.

This does NOT affect the age at which one may make a QCD. The eligibility age for a qualified charitable distribution remains the same at 70 ½.

Finally, the annual qualified charitable distribution maximum amount of $100,000 will be indexed for inflation starting in 2024.