

Committee on Ways and Means

United States House of Representatives

February 14, 2013 Hearing

Tax Reform and Charitable Contributions

Mr. Chairman Camp, Mr. Ranking Member Levin, and members of the Committee:

I am Conrad Teitell of the Cummings & Lockwood law firm and the volunteer legal counsel for the American Council on Gift Annuities (ACGA). I speak on ACGA's behalf. ACGA (formerly the Committee on Gift Annuities) was formed in 1927. It is an IRC §501(c)(3) organization described in IRC §170(b)(1)(A)(vi). ACGA is sponsored by over 1,000 social welfare charities, health organizations, environmental organizations, colleges, universities, religious organizations and other charities. The Mission of ACGA is to "actively promote responsible philanthropy."

Beware of salami tactics when considering tax-law changes that affect charities.

The term "salami tactics" was coined by Matyas Rakosi, a Hungarian politician in the 1950s. He said:

If your opponent has a salami and you want it for your very own, you must not grab it — because he will defend it. Instead take for yourself a small slice and he will not notice it. Or, if he does, he will not mind very much. And then you take another slice, and then another slice. And slowly but surely, that salami will pass from his possession into yours.

So it could be with the charitable tax incentives — a slice here and a slice there.

Caps can be lowered, floors raised and credits reduced. And before you know it, our nation's unique tax encouragement to charitable giving would disappear. Some of the proposals would take big chunks at the outset — all to the detriment of the countless millions who rely on our nation's charities.

Over 100 years ago, General William Booth, the founder of The Salvation Army, was asked what one word describes the work of the Army. He replied, "Others."

Charitable gifts benefit others. That is why we are asking Congress to: **(1)** make permanent the provision that allows direct tax-free distributions from IRAs to charity (the so-called IRA/charitable rollover); **(2)** expand the IRA rollover to include transfers to fund a charitable life-income plan for the donor; **(3)** eliminate the charitable deduction

as one of the deductions subject to the reinstated overall limitation on itemized deductions (the Pease provision); and **(4)** not place a cap or floor on the charitable deduction — or impose a lower tax rate at which contributions may be deducted.

Our four points — the details:

- I. **The “extenders” provision that provides for direct tax-free transfers to public charities from IRAs (the “IRA/charitable rollover”) expires at the end of 2013 and should be made permanent.**

The IRA/charitable rollover is unique in that it gives tax incentives to the two-thirds of taxpayers who don’t itemize but take the standard deduction.

Although no charitable deduction is allowable for IRA/charitable rollovers, the rollovers aren’t taxable. No tax on otherwise taxable income is the equivalent of a charitable deduction for nonitemizers.

The IRA/charitable rollover, first enacted in 2006, has resulted in millions of dollars of charitable gifts that would not otherwise have been made. It helps the Americans served by our nation’s charities — provides for feeding the hungry, education, medical services, sheltering the homeless and myriad other services that American citizens need.

This provision has expired a number of times and has been reenacted retroactively — but often too late for most taxpayers to avail themselves of this way of benefitting the people served by our nation’s charities.

Being off-again-on-again-off-again is confusing to taxpayers and reduces the number of new donors and repeat annual donors. The law should be made permanent.

The law that expires this year — the specifics. An individual age 70½ or older can make outright (direct) charitable gifts from an IRA — including required minimum distributions — of up to \$100,000 to public charities (other than donor-advised funds and supporting organizations) and not have to report the IRA distributions as taxable income on his or her federal income tax return. Most private foundations are not eligible donees, but private operating and pass-through (conduit) foundations are. The tax-free rollover is for outright gifts only, not life-income gifts. A charitable deduction is not allowable for the amount transferred to charity from an IRA, but the donor is not taxable on the amount transferred — up to \$100,000. Not being taxable on income that would otherwise be taxable is the equivalent of a charitable deduction.

Making the expired Charitable IRA permanent would continue to provide charitable tax incentives for nonitemizers.

- II. **The Charitable/IRA should be expanded to include life-income charitable gifts — gifts that pay income to the donor for life, with a remainder to a qualified charity. This would be at no revenue loss to the government because annual payments to the donor would be fully taxable at ordinary income tax rates.**

The Public Good IRA Rollover Act of 2011 was introduced in both the House and the Senate in 2011 and in every Congress over a number of earlier years. The bill has always had bipartisan co-sponsors in both the House and the Senate.

The Public Good IRA Rollover Act — the bill's scope. It would allow tax-free IRA rollovers for both outright and life-income gifts and with no annual ceiling. And it includes rollovers to *all* public charities and *all* private foundations.

If it is deemed that the absence of annual ceilings on the amount that can be rolled over outright annually would make this bill too costly at this time and if there are concerns about including donor advised funds, supporting organizations and private foundations as qualified donees, we ask the Ways and Means Committee to report out ACGA's proposed All-American Charitable IRA Rollover.

The All-American Charitable IRA Rollover Act would:

(draft language is at the end of this statement)

- **Certainty.** Make permanent the current law that expires at the end of 2013 that allows individuals age 70½ or older to make direct (outright) gifts from an IRA of up to \$100,000 per year to public charities (other than donor advised funds and supporting organizations) and to private operating and passthrough (conduit) foundations without having to report the IRA distributions as taxable income on their federal income tax returns.
- **Expand current law to authorize tax-free IRA rollovers for gifts that benefit charities and provide taxable retirement income for the donors.** The qualified charities would be the same donees authorized under the current law for direct rollovers. There would be a \$500,000 annual ceiling for life-income rollovers and donors must be age 59½ or older.
- **Required minimum distributions.** The types of life-income plans assure that the annual taxable payments will be equal to (or greater than) what an individual would receive under the required minimum distribution rules had he or she kept the funds in the IRA instead of rolling them over for a

life-income plan. The life income paid from the rollover cannot be assigned.

- **No revenue loss to the government.** Under the authorized life-income plans, the IRA owner will be taxable on income received at ordinary income tax rates. Because the payouts are 5% or more, there will be more income paid with the charitable plans than under the normal payouts of the minimum required distribution rules. The higher payout amounts will produce greater tax revenue for the Treasury.

The current outright (direct) IRA/charitable rollover has resulted in millions of dollars of charitable gifts that would not otherwise have been made. It helps the Americans served by our nation's charities — provides for feeding the hungry, education, medical services, housing assistance, and myriad other services that American citizens need. **The life-income rollover would greatly increase those gifts.**

Why would IRA owners not just give outright to charity (a direct gift) from an IRA as provided under the existing law? Many IRA owners want to make charitable gifts, but also need retirement income. The life-income IRA rollover is an excellent way for donors of average resources to combine a charitable gift with retirement income. Many charities have donors who are “standing by” and wish to make life-income charitable gifts from their IRAs.

This is an All-American Charitable IRA Rollover. It allows all Americans with IRAs — not just wealthy taxpayers — who meet the minimum age requirements, to benefit charities. And since it encourages non-itemizers (over 65% of taxpayers) as well as itemizers, it is truly All-American.

- III. **A disincentive to charitable contributions is the inclusion of the charitable deduction as a deduction that is subject to the reinstated overall limitation on itemized deductions (the Pease provision).** The charitable deduction is unique among the deductions that are subject to the Pease provision because it is an expenditure that is entirely voluntary (unlike state and local taxes and mortgage interest). The charitable deduction shouldn't be subject to the Pease limitation. Subjecting charitable gifts to that provision will significantly decrease charitable contributions — to the harm of the people who are served by our nation's charities.
- IV. **Ceilings on the charitable deduction already abound.** Depending on the type of gift and the type of donee charity, the ceiling on deductibility for itemizers is 20%, 30% or 50% of adjusted gross income. Caps, floors and a lower tax rate at which contributions may be deducted should not be imposed. It is contrary to the long-established (since 1917) government policy to encourage charitable gifts.

To sum up: Decreased support from federal, state and local governments and increased burdens on charities make this the time to enact legislation that increases — not decreases — the incentive to make charitable gifts. Charities need the funds now to do their vital work.

We urge you to act now.

There is a tide in the affairs of men
Which taken at the flood, leads to fortune,
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
On such a full sea are we now afloat,
And we must take the current where it serves,
Or lose our ventures.

— *Shakespeare's* Julius Caesar

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All-American Charitable IRA Rollover Act of 2013 — Draft Bill

To amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts to include rollovers for charitable life-income plans for charitable purposes.

Be it enacted by the House of Representatives and the Senate of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “All-American Charitable IRA Rollover Act of 2013.”

SEC. 2. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) In General -- Paragraph (8) of section 408(d) of the Internal Revenue Code of 1986 (relating to tax treatment of distributions) is amended to read as follows:

(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES

(A) IN GENERAL

For purposes of this paragraph, so much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year -

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and does not exceed \$100,000, shall not be includable in gross income of such taxpayer for such taxable year, or

(ii) which is made directly by the trustee to a qualified split-interest entity for the benefit of an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and does not exceed \$500,000, shall not be includable in gross income of such taxpayer for such taxable year.

(B) QUALIFIED CHARITABLE DISTRIBUTION

For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) -

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½, or

(ii) which is made directly by the trustee to a qualified split-interest entity for the benefit of one or more organizations described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 59½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includable in gross income without regard to subparagraph (A).

(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE

For purposes of this paragraph -

(i) a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph), or

(ii) a distribution to a split-interest entity described in subparagraph (B)(ii) shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the benefit of an organization described in subparagraph (B)(ii) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) APPLICATION OF SECTION 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includable in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includable if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as one contract for purposes of determining under section 72 the aggregate amount which would have been so includable. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) SPLIT-INTEREST ENTITY DEFINED

For purposes of this paragraph, the term "split-interest entity" shall include -

(i) a charitable remainder annuity trust as defined in section 664(d)(1) which must be funded exclusively by a qualified charitable distribution, or

(ii) a charitable remainder unitrust as defined in section 664(d)(2) which must be funded exclusively by one or more qualified charitable distributions, or

(iii) a charitable gift annuity as defined in section 501(m)(5) which must be funded exclusively by a qualified charitable distribution, and shall commence fixed payments of 5% or greater not later than one year from date of funding.

(iv) No person may hold an income interest in a charitable remainder annuity trust, a charitable remainder unitrust or a charitable gift annuity funded by a qualified charitable distribution other than one or both of the following: the individual for whose benefit the individual retirement plan is maintained and the spouse of such individual. Income interests in split-interest entities funded by qualified charitable distributions shall

not be assignable.

(F) SPLIT-INTEREST ENTITY DISTRIBUTIONS

For purposes of this paragraph -

(i) notwithstanding section 664(b), distributions made from a trust described in subparagraph (E)(i) or subparagraph (E)(ii) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A), and

(ii) qualified charitable distributions made for the purpose of funding a charitable gift annuity shall not be treated as an investment in the contract under section 72(c).

(G) DETERMINING DEDUCTION UNDER SECTION 170

Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

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