DONATION OPPORTUNITIES TO CHARITIES UNDER THE CARES ACT

By Claire Axelrad| April 13th, 2020|COVID-19 / Coronavirus, Nonprofit Sector, Philanthropy; Fundraising Coach at Bloomerang; Link to article provided by the Pennsylvania Downtown Center.

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act signed on March 27, 2020 includes a number of provisions designed to rescue an economy being decimated by a pandemic the likes of which the world has seldom, if ever, seen.

With plenty of news coverage of this legislation, little light has been shined on how it takes into account the ways nonprofits will suffer – and specifically how this legislation can help. We want to let you know about a few key provisions of the new CARES (Coronavirus Aid, Relief, and Economic Security) Act and **strongly recommend that you consult with your own professional legal or financial advisors on the impact of the law on 2020 taxes in regard to your charitable giving and also for the most up to date regulations.**

1. The new law allows all taxpayers to take a charitable deduction of up to $300, <u>even if you do not itemize</u>. If everyone gave "just" $300, such support would have a huge impact on goals, missions and those the charities serve. The law provides for a universal, above-the-line, deduction of up to $300 cash made by any taxpayer – whether they itemize or not. This will reduce taxable income for 2020. It makes giving less expensive for donors. This is up to $300 they won't have to pay taxes on, even if they don't itemize.

Conditions: (CARES Act Section 2204 amends IRS Code, adding new § 62(a) (22)).

- Gifts must be made in cash.
- Gifts must be made to a public charity, not to a supporting organization, private foundation or donor advised fund.
- Gifts must be made in 2020 (or after; this is not currently limited to just this year), and cannot be carried over from excess contributions made in a prior year.
- Gifts are eligible for the above-the line deduction in addition to the standard deduction.

2. For those who do itemize their deductions, the new law allows for cash contributions to qualified charities to be deducted up to 100% of adjusted gross income for the 2020 calendar year. Previously, deductible gifts to public charities were generally limited to 60% of a taxpayer's adjusted gross income (AGI). This year there's no cap and donors can deduct up to 100% of AGI for 2020. Any excess contributions available can be carried forward for the next 5 years, subject to the 60% AGI limit previously in place. For corporations, the new law raises the annual limit from 10% to 25% of taxable income. <u>Consult with your own advisor for the most accurate, up-to-date information.</u>

Conditions:

- **Gifts must be made in cash to qualify for the 100% of AGI deductibility.** The limit for gifts of appreciated long-term capital gains property is 30% of AGI. Donors might consider generating cash and decreasing taxes by:
    - **Selling depreciated securities** that have declined in value below their cost. They could then realize the capital loss and contribute the cash.
    - **Using a capital loss to offset gain on sale of appreciated assets**, thereby avoiding capital gains taxes and using the cash proceeds to make a charitable gift without a percentage limitation.
    - **Selling appreciated securities.** While they'd recognize a capital gain, they could donate the sale proceeds to eliminate taxation of ordinary income.

- **Gifts must be made to a public charity**, not to a supporting organization, private foundation or donor advised fund.
- **The increased deduction is not automatic; it must be elected**. It is likely the IRS will provide further guidance as the 2020 tax filing deadline approaches.
- **It's possible the deduction could be disallowed if the donor also makes noncash contributions.** Because of a drafting error in the 2018 tax legislation, it appears the 60% percentage limitation was 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. This is certainly something a donor would want to discuss with their advisor were they contemplating making both generous cash gifts exceeding 60% of AGI *and* non-cash charitable contributions.

3. The new law temporarily suspends the requirements for required minimum distributions (RMD) for the 2020 tax year. This probably comes as a relief to many who would have had to withdraw a greater percentage of your retirement accounts after the decline in the stock market. Many donors use their RMD to make a gift from their IRA. If you are 70½ or older, you can still make a gift from your IRA or name a 501(c)(3) charity as a beneficiary.

- **This will likely reduce the incentive to make charitable rollover distributions from IRAs in 2020 for most donors.** Donors can still do this if they wish, but most donors will likely wait until 2021.

- **Some donors, however, will see this as an opportunity because there will no longer be a $100,000 limit on the amount they're allowed to transfer to charity from their IRA.** Due to the unlimited charitable deduction allowed for cash gifts this year – even exceeding 100% of AGI – donors can ask IRA holders to sell assets (above the amount of the RMD) and distribute the proceeds to them in cash. They can then donate the cash, realizing an offsetting income tax deduction for the full amount. This may be the only year they can do this. Up until now, donors had to wait to transfer IRA assets in excess of the $100,000 allowable annually until their death. And those assets could be assessed both income and estate taxes.

This is not intended as financial or legal advice but rather as information. Please check with your tax and financial advisors regarding your specific situation and current up to date regulations.