

# “It’s Elementary, My Dear Watson: Protecting Deductions After the TCJA”

9/24/19 Northwest Planned Giving Roundtable Annual Conference

## F. Jackson Lewis and Richard B. Solomon

### I. Effects of TCJA

- Giving USA 2019 findings
  - Individual giving decreased 1.1% in 2018 (a decrease of 3.4% adjusted for inflation)
  
- TCJA (Tax Cuts and Jobs Act)
  - Principal change affecting charities: treatment of deductions
  - Taxable income = gross income less deductions
    - Deductions are greater of a) standard deduction, or b) itemized deductions.
  - Changes to itemized deductions
    - Fewer deductions:
      - State income tax and property tax deduction ("SALT") limited to \$10,000.
      - Eliminated "Miscellaneous Itemized Deductions"
        - Employee business expenses
        - Tax preparation fees
        - Legal and appraisal fees incurred in connection with charitable donations
  - Federal standard deduction increased to:
    - Single - \$12,200 (\$13,850 if age 65)
    - Married filing jointly - \$24,400 (\$27,000 if both age 65)
  - Beware: Oregon has lower standard deduction than federal:
    - Single - \$2,270
    - Married filing jointly - \$4,545
    - Taxpayers may take standard deduction for federal return and itemize on the Oregon return.
  - More taxpayers are now claiming the standard deduction:

<u>Income</u>	<u>2017</u>	<u>2018</u>
\$50k to \$75k	63%	90%
\$75k to \$100k	48%	84%
\$100k to \$250k	22%	73%
\$250k to \$1 million	5%	46%
\$1 million +	9%	29%

## II. What Problems Are Donors Looking to Solve?

- Increased standard deduction
  - Limits tax benefits of annual gifts, unless substantial.
- Increased estate and gift tax “exemption” amounts
  - Limits gifting motivated by aversion to taxation or government spending.
  - Limits gifting motivated by preference for a charitable gift over tax payment.
- Donor advised fund contributions to bunch deductions
- Accumulation of highly appreciated stock
  - Donor Advised Fund
  - Charitable Remainder Trust
  - Exchange Funds for diversification then into DAF or CRUT
  - Diversification into social impact investing portfolio
- Contributions of Complex Assets
  - Operating businesses (“S” Corps, LLCs, Corporations)
  - Real estate
  - Art and tangible personal property
  - Can contribute to DAF, cash to donor’s intended charities
- Gift of retirement assets (QCDs)
- Private Foundations

## III. Qualified Charitable Distributions (QCDs) (Internal Revenue Code § 408(d)) (See Exhibits A & B)

- Main benefit: Provides an “above the line” deduction to taxpayers claiming the standard deduction. Above-the-line deductions are subtracted from your income before adjusted gross income (AGI) is calculated for tax purposes.
- Other benefits:
  - Lower AGI
  - Lower MAGI (related to Medicare premiums)
- Donor must be at least age 70½.
- \$100,000 annual limit.
- Not subject to 60%/30% AGI limits.

- Available only to IRAs, not SEPs, 401(k)s or employer profit-sharing or money purchase plans.
- Donor cannot receive any benefit.
- Not available for contributions to Donor Advised Funds.
- May satisfy pledge.

IV. Substantiation requirements for charitable contributions (Treasury Regulation § 1.170A) (See Exhibit C)

- Cash, under \$250 [Reg. § 1.170A-13(a)(1)], need either:
  - Cancelled check,
  - Receipt, or
  - "Other reliable written record"
- Cash, \$250 or more [Reg. § 1.170A-13(f)]:
  - Written acknowledgement.
  - Contemporaneous.
    - Means taxpayer must receive the acknowledgement by the earlier of a) the date the taxpayer files a return for the year of contribution, or b) the due date, including extensions, for filing that return.
  - Acknowledgement must include:
    - Amount of gift.
    - A statement of whether or not the donee organization provides any goods or services in consideration of the gift.
- Non-cash, under \$250 [Reg. § 1.170A-13(a)(1)]:
  - Need receipt showing:
    - Date and location of the contribution.
    - Description of the property.
- Non-cash, \$250 or more [(Reg. § 1.170A-13)(f)]:
  - Written acknowledgement.
  - Contemporaneous.
  - Must include:
    - Description of gift.
    - A statement of whether or not the donee organization provides any goods or services in consideration of the gift.
- Form 8283 required for non-cash donations of \$500 or more
  - Special rules for
    - Art
    - Automobiles

V. Non-Cash contributions

- For tangible personal property:
  - Deduction is FMV only if charity uses the property in its exempt function.
  - For property not used in the charity's exempt function, deduction is the lower of FMV or taxpayer's cost.
  - Charitable auctions: By definition, property donated for sale in a charitable auction is not property used in the charity's exempt function. Therefore, deduction is limited to the lower of FMV or taxpayer's cost.

**Exhibit A to Handout – “It’s Elementary, My Dear Watson: Protecting Deductions After the TCJA”**

**Northwest Planned Giving Roundtable**

IRC Section 408

Selected Language Regarding QCDs:

“d) Tax treatment of distributions.--

(1) In general. --Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.”

\* \* \* \* \*

“(8) Distributions for charitable purposes. --

(A) In general. --So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed \$100,000 shall not be includible 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

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70 1/2.

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

(C) Contributions must be otherwise deductible. --For purposes of this paragraph, 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).

(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 includible 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 includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction. --Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170 .

[(F) Repealed. Pub.L. 114-113 , Div. Q, Title I, § 112(a) , Dec. 18, 2015, 129 Stat. 3047”

Exhibit B to Handout – "It's Elementary, My Dear Watson: Protecting  
Deductions After the TCJA"  
Northwest Planned Giving Roundtable

**Richard B. Solomon**

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**From:** Richard B. Solomon <Rbs@Rbsolomon.com>  
**Sent:** Tuesday, September 17, 2019 2:40 PM  
**To:** 'Richard B. Solomon (rbs@rbsolomon.com)'  
**Subject:** Using your IRA for charitable contributions

**I've written the email below to explain Qualified Charitable Distributions. The email is targeted to higher income married taxpayers over age 70½ who have no mortgage interest deduction. The strategy described is much less useful for high income single taxpayers since their standard deduction is \$13,850 while their SALT deduction is \$10,000, the same as married filing joint taxpayers.**

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Dear Client,

As you know, taxable income is reduced by either itemized deductions (medical expenses, state and local taxes, mortgage interest, charitable and miscellaneous deductions), or, if it is greater, a standard deduction. In December 2017, Congress passed the Tax Cuts and Jobs Act (TCJA). Significantly, TCJA increases the standard deduction while 1) eliminating some itemized deductions, and 2) limiting the deduction for state and local taxes (including property taxes) to a maximum of \$10,000. For 2019, the standard deduction for married couples will be \$27,000 (\$24,400 plus the over age 65 additional deduction of \$1,300 per person).

So, for taxpayers like you who do not pay any mortgage interest and have modest out of pocket medical expenses, you are only able to get a tax benefit from charitable contributions to the extent they exceed \$17,000. But there is a way to preserve the income tax benefits of all your charitable contributions. Since you are over age 70½, you are eligible to make a Qualified Charitable Distribution (QCD) from your IRA. A QCD allows you to donate up to \$100,000 per year from your IRA to qualified charities without paying income tax on the transaction. The amount you donate to charity as a QCD is excluded from your adjusted gross income, thereby reducing your taxable income.

Qualified Charitable Distributions can satisfy all or part of the amount of your required minimum distribution from your IRA. But because the charitable contributions are excluded from income, you cannot take the contributions as an itemized deduction because that would be a double tax break from the same transaction. And you cannot make a QCD to a Donor Advised Fund.

Charitable contributions can only be made from IRAs, not 401(k)s or similar types of retirement accounts.

Example

Bill and Jane typically donate \$9,000 a year to charity. They paid off their home mortgage in a prior year. Jane's Required Minimum Distribution from her IRA is \$75,000. Under TCJA, their itemized deductions total \$19,000, consisting of \$10,000 of state income and local property taxes and \$9,000 of charitable contributions. Since their total itemized deductions are under \$27,000, they receive no benefit from their charitable or state and local tax deductions. But if they make their contributions directly from Jane's IRAs using a QCD, they will pay tax on only \$66,000 of the IRA distribution, thereby reducing

adjusted gross income by \$9,000; consequently, they receive the full tax benefit from their charitable contributions.

Note, QCDs are included in the amount reported as distributions to you on Form 1099-R. You need to remember to tell me the amount of your QCDs so I can reduce your adjusted gross income by that amount.

Another option - charitable stacking or lumping using donor advised funds

Charitable "stacking" or "lumping" is emerging as another strategy. For example, instead of giving \$10,000 per year over five years to charity, you would give \$50,000 in one year, taking you above the new standard deduction and thus providing a tax benefit for most of your contributions. Using a donor advised fund (DAF) can facilitate the gift. A DAF is a philanthropic vehicle established at a public charity like the Oregon Community Foundation. It allows donors to make a charitable contribution, receive an immediate tax benefit and then recommend grants from the fund over time. An easy way to think about a donor-advised fund is like a charitable savings account: a donor contributes to the fund as frequently as they like and then recommends grants to their favorite charity when they are ready. Another benefit is that if you contribute appreciated securities to a DAF, you avoid capital gain tax on the appreciation.

This is a complex area of the tax law. Before making any large charitable contributions, I encourage you to talk with me.

*Richard B. Solomon, CPA  
850 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204-2054  
(503) 228-9800  
Fax (503) 227-7924*



**Exhibit C to Handout – “It’s Elementary, My Dear Watson: Protecting Deductions After the TCJA”**

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Internal Revenue Regulations: § 1.170A-13 Recordkeeping and return requirements for deductions for charitable contributions.

“(f) *Substantiation of charitable contributions of \$250 or more—*

“(1) *In general.* No deduction is allowed under section 170(a) for all or part of any contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization. A taxpayer who makes more than one contribution of \$250 or more to a donee organization in a taxable year may substantiate the contributions with one or more contemporaneous written acknowledgments. Section 170(f)(8) does not apply to a payment of \$250 or more if the amount contributed (as determined under §1.170A-1(h)) is less than \$250. Separate contributions of less than \$250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by a taxpayer to a donee organization during a taxable year equals \$250 or more.

(2) Written acknowledgment. Except as otherwise provided in paragraphs (f)(8) through (f)(11) and (f)(13) of this section, a written acknowledgment from a donee organization must provide the following information—

(i) The amount of any cash the taxpayer paid and a description (but not necessarily the value) of any property other than cash the taxpayer transferred to the donee organization;

(ii) A statement of whether or not the donee organization provides any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization;

(iii) If the donee organization provides any goods or services other than intangible religious benefits (as described in section 170(f)(8)), a description and good faith estimate of the value of those goods or services; and

(iv) If the donee organization provides any intangible religious benefits, a statement to that effect.

(3) Contemporaneous. A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of—

(i) The date the taxpayer files the original return for the taxable year in which the contribution was made; or

(ii) The due date (including extensions) for filing the taxpayer's original return for that year.