CARES Act Includes Charitable Giving Incentives (Update)

Posted by PG Calc's Bill Laskin on May 1, 2020 updating his *March 27, 2020 summary of the CARES Act and its implications for gift planning.*

The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, which the President signed into law on March 27th, provides more than $2 trillion in relief touching nearly every corner of the U.S. economy: large and small businesses, health care providers, non-profits, individual citizens, and on and on. Included in its 880 pages are several provisions of particular interest to gift planners and to fundraisers generally. Let's go through them. I'll start with the most dramatic change.

1. **100% of AGI limit available in 2020 for cash gifts to most public charities:** For the 2020 tax year only, donors may elect to apply a new 100% of adjusted gross income (AGI) limit to cash gifts to public charities ("50% charities"). The election appears to be available separately for each cash contribution. Whether a donor would want to make the election for some gifts and not for others will depend on the donor's specific tax situation. Gifts to donor advised funds (DAFs) or supporting organizations (SOs) are not eligible for this special election. The 100% limit is reduced dollar-for-dollar by other itemized charitable deductions. This means that in 2020, a donor who deducts 30% of her AGI in long term appreciated property gifts and elects the 100% of AGI limit for qualified cash contributions will be able to also deduct up to 70% of her AGI for qualified cash gifts, a total deduction of up to 100% of AGI. If this donor uses all of her available deduction for qualified cash gifts, she would pay no federal income tax in 2020! Ordinarily, this donor's total deduction would be limited to 60% of AGI and she would have to carry forward the rest. This change presents a big opportunity for attracting major gifts and planned gifts in 2020.

   Are planned gifts eligible? The Act is silent on this question. Since a gift annuity entails a direct transfer to the charity, one can make a strong argument that it should qualify. Gifts to charitable remainder trusts (CRTs) or pooled income funds might also qualify on the basis that they are considered gifts "to" the charity, just like outright gifts, not "for the use of" the charity. However, a Joint Committee on Taxation report describing provisions in the CARES Act, released March 23, 2020, states that cash gifts to fund a CRT are not eligible for the 100% election unless the remainder is distributed to charity during 2020 (see p. 26 of the report: Description Of The Tax Provisions Of Public Law 116-136). While not necessarily the last word on this question, the JCT report increases the likelihood the IRS will adopt the same interpretation. The JCT does not mention gift annuities, which can be viewed as an encouraging sign that cash gifts to fund gift annuities are, indeed, eligible for the 100% election. Our best advice is to advise your donors to consult their own tax counsel on this question.

The 100% election may not always be the tax-wise choice: Because federal income tax rates are progressive, it is not a given that it will be to a donor's advantage to make the 100% of AGI election. For example, a single donor who has taxable income of $200,000 is in the 32% federal income tax bracket. If the donor makes $200,000 in qualified cash contributions, makes the 100% of AGI election, and itemizes no other deductions, he will pay no federal income tax in 2020, saving $45,015.50 in tax as a result. However, if he doesn't make the election, he would deduct $120,000 and carry forward $80,000 to 2021. Assuming he can deduct the remaining $80,000 in 2021 and again has taxable income of $200,000, he will save $31,625 in federal income tax in 2020 and approximately another $22,136 in 2021, a total tax savings over the two years of $53,761. A donor in the highest federal tax bracket, 37%, could see an even larger tax benefit by not taking the 100% election. Donors should consult their tax advisers to determine whether the 100% election makes sense for them.

2. **Non-itemizers eligible for $300 charitable deduction:** A reduction in taxable income is available in 2020 for donors who do not itemize their deductions. It is an "above-the-line" adjustment to income that will reduce a donor's AGI and thereby reduce taxable income. This adjustment is available for cash gifts to public charities ("50% charities") only and is limited to $300 per taxpayer. It is not available for gifts to DAFs or SOs, nor for cash deductions carried forward from prior years. While far more limited than above-the-line deductions or the "Universal Charitable Deduction" previously proposed by the charitable sector, this change will encourage the 90% of taxpayers who do not itemize to make more cash gifts in 2020. Donors who prefer to itemize their deductions can still itemize them (see (1) above).

   What about married couples? While many read the CARES Act provision to be $300 per individual, the JCT report mentioned earlier states in a footnote that the $300 deduction is per "tax-filing unit." That would mean a married couple who files jointly and doesn't itemize may deduct up to $300 in qualified charitable contributions, not up to $600 (see p. 22, footnote 76 in the report). Unless and until the IRS clarifies this provision, best to advise donors to consult their tax advisors as to how much a married couple filing jointly can deduct.

   Clarifying regulations could be issued before the end of 2020. Also, later this year the IRS will publish tax forms for the 2020 filing season that could shed light on the adjustment to income available to married couples filing jointly.

3. **Required minimum distributions waived in 2020 for most donors:** Most donors will not have a required minimum distribution from their retirement plan in 2020. Minimum distributions will not be required from IRAs, 401(k)s, 403(b)s and most other defined contribution plans maintained by an employer for individuals. Minimum distributions that have already started are still required from defined benefit pension plans and some 457 plans. However, required minimum distributions that would have had to start in 2020 don't have to start until 2021,

including distributions from defined benefit pension plans and 457 plans. This change will dampen somewhat the incentive for a donor to make a qualified charitable distribution (QCD) from her IRA in 2020. Even so, making a QCD this year will still allow itemizers and non-itemizers alike to direct up to $100,000 from their IRA to charities in a tax efficient manner.

4. **Limit on cash contributions from corporations increased to 25% in 2020:** The taxable income limit that applies to cash contributions made by corporations to “50% charities” (again, except DAFs and SOs) is increased from 10% to 25% for 2020. The usual 10% limit still applies to other charitable contributions by corporations, and those contributions reduce the 25% limit dollar-for-dollar. Qualified cash contributions in excess of the 25% limit can be carried forward for up to 5 years under the usual limits. This change should encourage more corporate giving than would have otherwise occurred this year.
5. **Limit on contributions of food inventory increased to 25% in 2020:** The limitation on deductions for contributions of food inventory by any trade or business is increased from 15% to 25% for 2020. This change should encourage more food donations in 2020 from businesses of all types.

The CARES Act has been made necessary by a terrible pandemic. Foremost in the minds of your donors are acute concerns about their continued health and financial wellbeing and of those they care about. Nevertheless, many of them are also eager to do what they can to help others less fortunate. Contact your donors, ask how they are doing, and remind them that with their help your organization can continue to improve lives in the face of the coronavirus crisis and beyond.