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CHARITABLE GIVING INCENTIVES UNDER THE CARES ACT

The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") includes a number of provisions that encourage donors to provide assistance to charitable organizations. Specifically, the CARES Act: (1) creates a new $300.00 above-the-line deduction for taxpayers who do not itemize deductions and who make monetary gifts to charitable organizations beginning in 2020; (2) temporarily modifies certain limitations relating to allowable tax deductions for cash contributions made to charitable organizations during 2020; and (3) modifies limitations relating to allowable tax deductions for charitable contributions of food inventory beginning in 2020.

(1) NEW $300 ABOVE-THE-LINE DEDUCTION FOR TAXPAYERS WHO ELECT NOT TO ITEMIZE DEDUCTIONS

For taxable years beginning in 2020, individuals who do not elect to itemize deductions (*i.e.*, individuals who take the standard deduction) and who donate to charitable organizations may claim a partial above-the-line deduction for total gifts of up to $300.00 – or up to $600.00 for married couples filing jointly. This deduction was not previously available to individuals who elect the standard deduction.

Requirements: To claim the deduction, a contribution must be a "Qualified Charitable Contribution." This requires that the contribution be made in cash and must be made to an organization described in section 170(b)(1)(A) of the Internal Revenue Code (the "Code"), a category that includes such charitable organizations as hospitals, churches, schools, governmental units and organizations that are publicly supported either through contributions from the general public within the meaning of section 170(b)(1)(A)(vi) of the Code or through exempt function income as contemplated by section 509(a)(2) of the Code. Significantly, this deduction cannot be claimed for any contribution: (1) to a Private Non-Operating Foundation or a Supporting Organization (as described in section 509(a)(3) of the Code); or (2) for the establishment of a new, or maintenance of an existing, Donor Advised Fund (as defined in section 4966(d)(2) of the Code).

(2) TEMPORARILY MODIFIED LIMITATIONS RELATING TO DEDUCTIONS FOR CHARITABLE CASH CONTRIBUTIONS

Prior to the passage of the CARES Act, the amount an individual was able to deduct for charitable gifts was capped at 60% of his or her taxable income for the applicable tax year. For corporations, the amount was capped at 10% of the corporation's taxable income for the applicable tax year. The CARES Act temporarily increases these limitations, allowing individuals and businesses to deduct much more of their charitable cash contributions made during the 2020 calendar year, thereby allowing individuals and corporations to decrease their taxable income.

New Limitations for Individuals: Under the CARES Act, individuals now may claim a deduction for any cash contribution made to a charitable organization up to the amount of the individual's adjusted gross income for the year. Any charitable contribution made that exceeds the new limit above may be carried over and used in later years in accordance with section170(b)(1)(G)(ii) of the Code.

New Limitations for Corporations: For corporations, the CARES Act provides that any cash contribution made to a charitable organization is allowed as a deduction, up to 25% of the corporation's taxable income. Any charitable contribution made that exceeds the new limit above may be carried over and used in later years in accordance with section 170(d)(2) of the Code.

Requirements Applicable to Both Individuals and Corporations: To claim the deduction in accordance with these new limitations, the contribution must have been made in cash and during calendar year 2020. The gift must have been donated to an organization described in 170(b)(1)(A) of the Code, as described above. The same restrictions noted above also preclude raising the limitation for contributions to Supporting Organizations or Private, Non-Operating Foundations or for new or existing Donor Advised Funds. Furthermore, the taxpayer must have elected for the CARES Act to apply. In the case of charitable contributions made by partnerships or S corporations, each partner or shareholder must separately elect to use the modified percentage limitations.

(3) TEMPORARILY MODIFIED LIMITATIONS RELATING TO DEDUCTIONS FOR CHARITABLE CONTRIBUTIONS OF FOOD INVENTORY

The CARES Act also increased the amount a taxpayer engaged in a trade or business may deduct for the charitable donation of food inventory. Under section 170(e)(3)(C) of the Code, the amount taxpayers (both individuals and corporations) could deduct for the charitable contribution of food inventory was 15% of the taxpayer's taxable income for the applicable taxable year. The CARES Act has increased this limit and now a taxpayer may deduct up to 25% of the taxpayer's taxable income for taxable years ending after December 31, 2019, and to the extent the food donations were made during calendar year 2020.

PRACTICAL TAKEAWAYS

The above CARES Act provisions were put in place to incentivize individuals and corporations to extend assistance to charitable organizations who are feeling the negative economic effects of COVID-19 along with other for-profit businesses. It is not yet clear how much additional giving will be spurred by these changes. Since the Tax Cuts and Jobs Act, it is estimated that approximately 85% of individuals take the standard deduction, so the creation of an above-the-line charitable deduction could generate a substantial amount of giving if utilized widely. Similarly, the increased caps on individual and corporate giving could motivate particularly altruistic donors to give more to charities fighting the current once-in-a-lifetime health crisis. In the near term, the modifications to limitations on deductions for food inventory may prove the most beneficial as food pantries and similar charities struggle to help larger populations in need of their services.

At the very least, hospitals and other charitable organizations should be aware that these incentives exist and consider strategies for communicating them to stakeholders and donors who may be able and willing to lend a helping hand during these challenging times. As part of this strategy, hospital foundations and other charities classified as supporting organizations may wish to communicate to potential donors about contributing directly to the hospital or other supported organization to help ensure that donations made in reliance on these new provisions are deductible.

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Hall Render's attorneys and professionals continue to maintain the most up-to-date information and resources, which are available at our COVID-19 Resource page, through our 24/7 COVID-19 Hotline at (317) 429-3900 or by contacting your regular Hall Render attorney.

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