

Explaining Supporting Organizations

Take-Away: Making a charitable contribution to a *supporting organization* could lead to a tax mistake.

Background: Many individuals over the age of 70 ½ now make qualified charitable distributions (QCDs) from their traditional IRAs. Many individuals now also plan to make use of the new ‘above-the-line’ \$1,000 charitable deduction that starts in 2026. Generally, these charitable giving opportunities are limited to contributions to 509(a) public charities. But what might come as a surprise to many donors is that neither a QCD nor an above-the-line charitable contribution can be made to a *supporting organization*. Which, of course, then begs the questions: What is a *supporting organization* and how can it be avoided when making charitable contributions?

Supporting Organization: A *supporting organization* is classified as a *public charity*, but only on a derivative basis, due to its relationship with one or more organizations described in IRC 509(a)(1) and (2.) *Supporting organizations* are sometimes used as an alternative to a private foundation, or they are created by charities themselves as an institutional support device, i.e., as a separate fundraising or asset accumulation entity.

Key to understanding Congress’ concern when denying a QCD or an above-the-line charitable deduction to a *supporting organization* is its apparent fear of the donor’s direct or indirect control of that supporting entity if he/she is a disqualified person, irrespective of the *public charity’s* purpose or origin. [IRC 509(a)(3)(C).]

Qualification: A *supporting organization* must satisfy a multi-part statutory and regulatory framework. It must be organized and operated for the exclusive benefit of, or perform the functions of, or carry out the purposes of one or more specific publicly supported organizations and satisfy some detailed relationship requirements. There are three different types of *supporting organizations*: Type I, Type II, and Type III (wow, those are original titles!) each which has different ‘responsiveness,’ integral part, or operational ‘tests.’ (Those I’ll skip, since this is about why donors cannot make QCD’s to *supporting organizations*, nor can they make a \$1,000 above-the-line charitable donation to a *supporting organization*.)

Control Prohibition: IRC 509(a)(3)(C) specifies that an organization will **not** qualify as a *supporting organization* if it is controlled, directly or indirectly, by one or more disqualified persons. This prohibition applies to all Types of supporting organization entities, and it operates independently of the organization and relationship requirements under IRC 509(a)(3)(A) and (B.)

Disqualified Persons: A disqualified person is defined in IRC 4946 but generally excludes foundation managers.

Donor Domination: Accordingly, the inquiry regarding a *supporting organization* is not regarding the donor's status alone, but on whether persons meet the statutory definition of disqualified persons who exercise control over the entity.

Control: The IRS defines 'control' functionally. [Revenue Ruling 80-207.] Its Regulations focus on whether disqualified persons, by aggregating votes or positions of authority, can require the entity to perform acts that significantly affect the entity's operations or they can prevent the entity from performing such acts. [Regulation 1.509(a)-4(j).] Control is conclusively presumed when disqualified persons, in the aggregate, possess 50% or more of the voting power of the entity's governing body or where one or more disqualified persons hold veto authority over the entity's actions.

Conclusion: Apparently, since there is so much fear regarding if disqualified persons control, directly or indirectly, a *supporting organization*, which then entails the IRS having to apply a functionality test for disqualified persons, i.e., a facts and circumstances analysis, Congress decided to simply prohibit any contributions to a *supporting organization* via a QCD or a \$1,000 cash give that is claimed 'above-the-line' starting this year. Bottom line: Make sure your QCD or \$1,000 cash gift is not to a *supporting organization*.

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