



Everyday Heroes: Preparation and Philanthropy in a Time of Pandemic

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Everyday Heroes: Preparation and Philanthropy in a Time of Pandemic

In June 1894, an ancient virus swept through Rutland County, Vermont, causing 18 deaths and 132 cases of paralysis.¹ This was America's first large-scale outbreak of polio—a disease that didn't reach its peak until 1952, with 57,628 illnesses and 3,145 deaths.² While this terrifying epidemic caused widespread fear, researchers and physicians worked diligently to stop its spread.

In 1951, Jonas Salk began work on a “killed virus vaccine,”³ which was administered to children across North America within a few years. Shortly thereafter, Albert Sabin created a live vaccine that could be administered orally.⁴ As a result, the United States saw its last case of naturally occurring polio in 1979. Salk and his fellow researchers were medical heroes who saved millions of lives across the globe.

COVID-19 is much more virulent and widespread than polio, and it generates the same level of fear and disruption. Life has been interrupted, interactions curtailed, and travel postponed. Workers have been quarantined, furloughed, and laid off. And yet today, we also see heroes—doctors, nurses, and medical workers who labor tirelessly to care for the sick, contain the spread, and develop treatments to conquer the virus.

While a medical army fights COVID-19 on the front lines, every American has a role to play. Financial professionals help clients cope with disruptions and prepare for unexpected difficulties. The future is bound to leave us with a new perspective as we recognize that the economic impact of the pandemic on clients and philanthropy will be felt long after COVID-19 is no longer a concern.

COVID-19 Stimulus Bills

The impact of COVID-19 has brought much of the world economy to a standstill. To combat its potentially devastating economic impact on U.S. businesses and workers, President Trump signed legislation to provide much-needed relief for the American economy—initially the Families First Coronavirus Response Act, followed by a corrections resolution to the first bill, and most

recently the very broad Coronavirus Aid, Relief, and Economic Security (CARES) Act (commonly referred to as the coronavirus stimulus bill).

Here are some of the key provisions of the legislation:

Charitable Contributions

Many people respond to a crisis by looking for ways to help. To encourage charitable giving, the CARES Act provides significant changes that affect the 2020 tax benefits of charitable contributions:

- It allows a \$300 above-the-line deduction for gifts to qualified charitable organizations.
- It increases the limitation on deductions by suspending the individual limitation of 50% of AGI (60% for cash) and raising the 10% corporate limit to 25%.
- It increases the limitation on charitable donations of food from 15% of AGI to 25%.

Let's look at these changes in more detail.

New Above-the-Line Deduction

Section 2204 of the CARES Act provides taxpayers who take the standard deduction with a limited above-the-line deduction for gifts to a qualified charitable organization.⁵ IRC §62(a) is amended with the addition of a new section:

(22) CHARITABLE CONTRIBUTIONS—In the case of taxable years beginning in 2020, the amount (not to exceed \$300) of qualified charitable contributions made by an eligible individual during the taxable year.

An “above-the-line deduction” is applied to a taxpayer's income before computing adjusted gross income (AGI) for federal income tax purposes, thereby reducing the amount of income subject to tax. Unfortunately, donors who itemize may not take the new above-the-line deduction.⁶

Increased Limitation on Deductions for Cash Gifts

Section 2205 of the CARES Act temporarily suspends the AGI limit on cash donations to qualified charitable organizations.⁷ For the 2020 tax year, individual donors may elect to deduct their cash contributions to public charities (not donor-advised funds) up to 100% of adjusted gross income. However, this deduction is reduced dollar for dollar with other itemized charitable

donations. A donor who contributes property in addition to cash would be limited to a total deduction up to 100% of AGI.

For example, Sandy owns a medical operations consulting firm. For 2020, her AGI will be \$333,500. She decides to make a significant contribution to her favorite charity—a gift of long-term appreciated property worth \$100,000 and a cash gift of \$233,500.

Appreciated property donation	\$100.00
Cash donation	\$233.500
Total donation	\$333.500
Sandy's 2020 AGI	\$333.500
Itemized Deductions:	
Charitable property (still subject to 30%-of-AGI limit) ⁸	\$100.000
Cash (election for 2020 100% deduction)	\$233.500
Total 2020 Itemized Deduction	\$333.500

For those donors who want to make an impact and are able to make use of this provision, the elimination of the limitation on deductions for cash contributions this year may provide an excellent giving opportunity.

Increased Limitation on Deductions for Donations of Food Inventory

The CARES Act provides a temporary increase (for 2020) of the limitation on charitable contributions of food inventory under IRC Sec. 170(e)(3)(C), from 15% to 25%.

Extension of Paid Leave

Government employers and employers with fewer than 500 employees must provide paid sick leave to employees who are forced to stay home due to illness, quarantine, or the need to care for a family member (either someone sick with COVID-19 or a child whose school or daycare is closed due to COVID-19). The CARES Act provides compensation using refundable payroll tax credits.

Eligible employers with employees who have COVID-19 may receive a refundable sick leave credit for amounts actually paid to the sick employees based on their regular rate of pay—up to

\$511 per day and \$5,110 for a 10-day period. If the employee is caring for a child as a result of a school or daycare closure, the employer may claim a credit for two-thirds of the employee's regular rate, up to \$200 per day and \$2,000 for a 10-day period.

2020 Rebate Recovery Payments for Individuals

The Federal government has already begun making direct payments of up to \$1,200 each for certain individual taxpayers (\$2,400 for married-filing-jointly taxpayers), with additional payments of \$500 per child under age 17. However, taxpayers will see reductions as AGI climbs above \$75,000 (individual) or \$150,000 (married filing jointly), with the rebate dropping to zero once AGI exceeds \$99,000 (individual) or \$198,000 (married filing jointly). The IRS will make payments electronically for taxpayers who have previously provided direct deposit information and by check for all other taxpayers, not later than December 31, 2020.

Expansion of Unemployment Insurance

For those who are out of work, the Act increases unemployment payments by an extra \$600 per worker, and extends regular unemployment benefits for an additional 13 weeks beyond the standard six-month period. For workers who are laid off, unemployment will be available for a four-month period under the law.

Forgivable Small Business Loans

The Small Business Administration will provide loans to small businesses for employee salaries, lease payments, and other business costs.

Large Business and Municipal Entity Loans

A significant amount of the bill will provide a \$500 billion stabilization fund for states, cities, and large businesses that have been severely affected by COVID-19. Within this fund, \$29 billion is set aside for airlines, air cargo carriers and airline contractors, and \$17 billion is provided for businesses important to maintaining national security (such as defense contractors).

Businesses that take advantage of a loan from this fund must retain at least 90% of employees through September 2020 and will not be allowed to increase executive pay for those earning over \$425,000 annually (with additional limits on severance and

other benefits). Executives in these companies who earn more than \$3 million per year may be subject to a salary reduction.

Special Rules for Retirement Funds

Individuals who take a distribution from a retirement fund for reasons related to COVID-19 may do so without paying the 10% early withdrawal penalty. This applies to distributions up to \$100,000 from qualified retirement accounts made at any time during 2020. This distribution is taxable over three years and may also be paid back within three years without regard to the cap on contributions. A coronavirus-related distribution is one made to an individual who: (1) is diagnosed with COVID-19, (2) has a spouse or dependent who has been diagnosed with COVID-19, or (3) experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off, having work hours reduced, being unable to work due to lack of childcare due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Temporary Waiver of RMD

The CARES Act also waives the required minimum distribution (RMD) rules for certain defined contribution plans and IRAs for calendar year 2020—both for 2020 RMDs and for 2019 RMDs that needed to be taken by April 1, 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19. If an individual already took their RMD early in 2020, it is possible to return that withdrawal to the IRA or other qualified retirement plan from which it was taken.

Employer Payments for Student Loans

Under the CARES Act, an employer may pay up to \$5,250 annually for an employee's student loans and the payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, and books) provided by the employer under existing law. The provision applies to any student loan payments made by an employer on behalf of an employee after the date of enactment and before January 1, 2021.

Over-the-Counter Medicine

To help individuals as they fight COVID-19 symptoms, the CARES Act allows patients to use funds from HSAs and Flexible Spending Accounts to purchase over-the-counter medical products, including those needed in quarantine and social distancing, without a prescription from a physician.

Crisis Estate Planning: The Importance of Wills, Advance Directives, and Power of Attorney

In comic book worlds, when innocent people experience times of trouble, a superhero swoops in to save the day. As fans of the Dark Knight of Gotham know, however, superpowers are not always necessary to be a hero. Batman's preparation and attention to detail allow him to be ready for any situation by always having just the right tool or gadget on his utility belt.

In the real world, in times of stress and danger, preparation and attention to detail can make all the difference. COVID-19 reminds us that this is particularly true when considering the potential for incapacitation due to health issues. Without preparation, the incapacitated individual's financial life, business, and even healthcare can be left to chance—or worse, in the hands of a person who does not have a personal interest in the individual's well-being. The implications of such an outcome make it vital for everyone to create both financial and health directives that include a will, a power of attorney, and advance medical directives.

A Will

Of course, the heart of an estate plan is often a will that directs asset distribution. The testator (the person making the will) may transfer specific property (stock, jewelry, money, etc.) to named beneficiaries (individuals or nonprofits) by making a bequest in the will. However, the testator can also use a will to accomplish other planning tasks, including:

- Naming an executor or personal representative to handle estate administration
- Naming a guardian for any minor dependents
- Directing administrative and tax decisions

that will minimize estate taxes and estate administration expenses

A will must comply with the specific legal requirements of the individual's state of residence, in addition to the general legal concepts that also apply. With certain exceptions, a will must be a written document signed in front of witnesses, and the testator must be of legal age and have the requisite mental capacity.

While a will is vital for nearly all estate plans, it is only part of a complete estate plan.

A Power of Attorney

A power of attorney is a legal document under state law that an individual uses to grant another person the authority (either specific or broad) to act on the individual's behalf. The power of attorney will clearly identify the agent of the individual (or "attorney-in-fact"), along with the exact powers granted to that agent. For someone with a successful business or substantial assets, this important tool ensures that someone the individual trusts will carry out their wishes if they are no longer competent to do so.

Advance Medical Directives

Advance medical directives provide direction for healthcare issues, and include a living will, a durable power of attorney for health care, medical directives, the appointment of a healthcare representative, and sometimes instructions on organ donation.

Distinguishing Between Nonprofits, Tax-Exempt Organizations, and Qualified Charities

In fiction, there are often clear signs that distinguish good characters from bad. Heroes wear capes and fight for right. Villains, who want to take over or destroy the world, bear a symbol of dastardly intent—a black hat, a thin mustache, a sudden maniacal laugh. Unfortunately, we are not afforded such clear-cut distinctions in life.

In the world of charitable giving, there are many wonderful and worthwhile organizations that work

hard to make life better, particularly for those less fortunate. However, there are also some less-than-reputable groups that are not working for the public good. To discourage these organizations, Congress, state legislatures, and the IRS developed a framework of nonprofit and tax-exempt giving laws under which taxpayers can only take tax deductions for charitable contributions to certain charities. While these laws do not explicitly define "good" charities and "bad" charities, they do provide definitions and clarification as to the types of charities and donations that are deductible.

Nonprofits, tax-exempt organizations, and qualified charities are all entities formed to achieve social good. It is even possible that an entity could be all three at once. But, for the purposes of the Internal Revenue Code (IRC), these organizations are distinct types.

- **A nonprofit organization** is organized for purposes other than generating profit, in which no part of the organization's income is distributed to its members, directors, or officers. Nonprofit status is conferred under state law, not federal law, and the requirements for and benefits to such organizations can therefore vary from state to state.⁹
- **A tax-exempt organization** is a nonprofit organization that is exempt from federal income taxation—a clear advantage indeed.¹⁰ However, in order to qualify for tax-exempt status, a nonprofit must be organized and operated exclusively for one or more exempt purposes. IRC Sec. 501(c) lists the types of organizations that may claim tax-exempt status.
- **A qualified charity** is an organization for which a donor can deduct a contribution. Note that a charity may be qualified for income tax purposes, but not necessarily qualified for gift and/or estate tax purposes—IRC Secs. 170(c), 2522, and 2055(a) individually list the categories of qualified charities for which contributions can be deducted for income, gift, and estate taxes, respectively.

501(c)(3) Organizations

There are 29 categories of tax-exempt organizations under IRC Sec. 501(c). However, when most people talk about a tax-exempt organization or charity, they are usually referring to an organization that qualifies under IRC Sec. 501(c)(3). A 501(c)(3) organization includes any corporation, community

chest, fund, or foundation organized and operated for one of these purposes:

- Religious
- Charitable
- Scientific
- Testing for public safety
- Literary
- Educational
- Fostering athletic competition at the national or international level (if no funds go towards the facilities or equipment)
- Preventing cruelty to children or animals¹¹

No net earnings generated by a 501(c)(3) organization can inure in whole or in part to the benefit of private shareholders or individuals. Furthermore, the organization cannot participate in political elections or devote a substantial part of its activities to influencing legislation.

Charities Considered Qualified for Income Tax Purposes

An income tax deduction is not the primary reason donors give, but it is the nexus between philanthropic planning and tax planning. Here are the categories of charities for which a contribution is deductible under IRC Sec. 170(c):

- A state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for exclusively public purposes
- A corporation, trust, community chest, fund, or foundation created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States
- A corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals
- A post or organization of war veterans, or an auxiliary unit or society of, or trust or foundation for, any such post or organization that is organized

in the United States or any of its possessions, where no part of the net earnings of which inures to the benefit of any private shareholder or individual

- In the case of a contribution or gift by an individual, a domestic fraternal society, order, or association, operating under the lodge system, but only if such contribution or gift is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals
- A cemetery company owned and operated exclusively for the benefit of its members, or any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incidental to that purpose, if such company or corporation is not operated for profit and no part of the net earnings of such company or corporation inures to the benefit of any private shareholder or individual

50% or 30%? That Is the Deductibility Question

Not every charitable contribution will be deductible in the same way for income tax purposes. There are several distinctions to draw between the deductibility of contributions made to a 50% organization as opposed to a 30% organization.

What Is a 50% Organization?

A 50% organization is one of the qualified charities expressly described under IRC Sec. 170(b)(1)(A):

- Churches
- Hospitals and medical research organizations
- Educational organizations
- Governmental units
- Publicly supported charities
- Certain private foundations
- Supporting organizations

CONCERNING PUBLICLY SUPPORTED CHARITIES

There are two ways that an entity may be considered a publicly supported charity for purposes of IRC Sec. 170(b)(1)(A):

1. A charity that normally receives a substantial part of its support from governmental units and/or direct or indirect contributions from the general public. This support does not include income received in the exercise or performance of its tax-exempt purpose.¹²
2. A charity that normally receives more than one-third of its support annually from any combination of gifts, grants, contributions or membership fees and gross receipts from admissions, sales of merchandise, performance of services, or the furnishing of facilities in an activity which is not an unrelated trade or business, and normally receives not more than one-third of its support from gross investment income and net unrelated business taxable income.¹³

What Is a 30% Organization?

Simply put, a 30% organization refers to all qualified charities not described under IRC Sec. 170(b)(1)(A)—generally speaking, this would be a private foundation as defined under IRC Sec. 509(a).

Deductibility Distinctions

Understanding the differences between a 50% organization and a 30% organization provides the basis for looking at how charitable contributions to each type of organization are deducted. For the sake of clarity, 50% organizations and 30% organizations will be referred to as public charities and private foundations, respectively. And in the following discussion, note that the donor's contribution base is the donor's adjusted gross income without regard to any net operating loss carryback to the taxable year.¹⁴

Cash Gifts

- Unless the CARES Act election for 100% is made for 2020, a cash contribution to a public charity is deductible up to 50% of the donor's tax contribution base (now 60%, pursuant to provisions in the 2017 Tax Cuts and Jobs Act).¹⁵

- A cash contribution to a private foundation is deductible up to 30% of the donor's contribution base.¹⁶

Property Gifts

- A contribution of property to a public charity is deductible up to 30% of the donor's tax contribution base.¹⁷
- The same contribution to a private foundation is deductible up to 20% of the donor's contribution base.¹⁸

Valuation of Property Gifts

- A contribution of appreciated property to a public charity is deductible at its full fair market value if the sale of the property would have resulted in long-term capital gain.¹⁹
- Generally speaking, the same contribution to a private foundation is deductible only at its tax basis as ordinary income property,²⁰ with one significant exception—a gift of qualified appreciated stock (defined as publicly traded stock that would produce long-term capital gain if sold) can be deducted at its fair market value.²¹

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In these days of COVID-19, we find heroes come in all shapes and sizes, from the small business owner who extends credit or employs those in need of a job, to the neighbor who sacrifices to help a neighbor, to the many medical professionals who risk their own health to care for the sick and the dying. As financial professionals, we can support these everyday heroes by providing reliable financial and estate planning guidance, ensuring that they are fully prepared to attend to current, ongoing, and future challenges.

ENDNOTES

- 1 <https://www.historyofvaccines.org/content/first-us-polio-epidemic>
- 2 <https://www.healthline.com/health/worst-disease-outbreaks-history#10>
- 3 <https://www.biography.com/scientist/jonas-salk>
- 4 <https://www.elsevier.com/connect/remembering-the-dreaded-summer-of-polio>
- 5 Section 2204, HR 748 (2020), p.171.
- 6 IRC §62(f).
- 7 Section 2205, HR 748 (2020), p.173.
- 8 IRC §170(b)(1)(C)(i).
- 9 For example, see the Revised Uniform Unincorporated Nonprofit Association Act—a law promulgated by the National Conference of Commissioners on Uniform State Laws—which governs all unincorporated nonprofit associations that are formed or operate in a state that adopts the Act.
- 10 IRC §501(a).
- 11 Reg. §1.501(c)(3)-1.
- 12 IRC §170(b)(1)(A)(vi). There are two tests to determine if a charity normally receives a substantial part of its support from governmental units and/or contributions from the general public. Meeting either test qualifies the charity. One, the charity normally receives at least one-third of its total support from governmental units and/or the general public. And two, if the support from governmental units and the general public is at least 10% of the organization's total support, and the charity is organized and operated so as to attract new and additional support from the government and the general public, and the charity can show a substantial degree of public support by various sources of support, the breadth of interests represented by the governing body, and the availability of public facilities and services.
- 13 IRC §170(b)(1)(A)(viii). See also IRC §§509(a)(2) and (3).
- 14 IRC §170(b)(1)(G).
- 15 IRC §170(b)(1)(A).
- 16 IRC §170(b)(1)(B).
- 17 IRC §170(b)(1)(C)(i).
- 18 IRC §170(b)(1)(D)(i).
- 19 IRC §170(b)(1)(C)(iv).
- 20 IRC §170(e)(1)(B)(ii).
- 21 IRC §170(e)(5).

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