

Tl;dr frequently asked

Q1. Is it \$50k in "legacy" QCDs plus \$100k in outright QCDs? or does the \$50k count toward the \$100k?

A1. The latter.

Q2. Can you make multiple, smaller "legacy" QCDs in the same year?

A2. Yes, provided they add to no more than \$50k.

Q3. Can both spouses make "legacy" QCDs to the same life income vehicle, a charitable remainder trust or a gift annuity? and who all can be the income beneficiaries?

A3. Yes, provided both are age 70-1/2 or older. The only permitted beneficiaries are the IRA participant herself and/or her spouse, but it is not required that they both be named even if both are funding the life income vehicle.

Q4. Could one spouse fund a charitable remainder trust from a "legacy" QCD in year one and the other spouse add to that trust from a "legacy" QCD in year two?

A4. Yes, the "one and done" limitation applies only to the individual who has made a "legacy" QCD in a prior year, and the requirement that the life income vehicle not include funding from other sources does not preclude funding from a "legacy" QCD.

Q5. Can the "legacy" QCD be used to add to an existing life income vehicle funded from other sources, and/or can additional contributions be made later from other sources to add to a life income vehicle funded by a "legacy" QCD?

A5. No to both questions. A life income vehicle funded from "legacy" QCDs can include funding from no other sources.

Q6. Can the "legacy" QCD be used to fund a contribution to a pooled income fund?

A6. No. Only a charitable remainder trust or a gift annuity can be funded from a "legacy" QCD.

Q7. What does it mean to say that the life income interest must be "nonassignable"?

A7. Outside the context of a "legacy" QCD, the income beneficiary may transfer part or all of her income interest in a charitable remainder trust or gift annuity to the remainder or issuing charity. This is not permitted with a life income vehicle funded with a "legacy" QCD.

Q8. So a gift annuity funded from a "legacy" QCD must continue for the life or lives of the annuitant(s), but could you limit a charitable remainder trust funded from a QCD to a term of years?

A8. The statute does not forbid this, but the term would have to be limited to the "shorter of" the stated term of years or the life or lives of the beneficiaries, because you cannot have any noncharitable beneficiaries other than the IRA participant and/or her spouse.

Q9. Can the beneficiary of an inherited IRA make a "legacy" QCD to a life income vehicle?

A9. Yes, provided she is age 70-1/2 or older. References elsewhere in these FAQs to the IRA "participant" are an inexact shorthand.

Q10. Can a "legacy" QCD be used to fund a deferred gift annuity?

A10. No, the statute requires that the annuity must commence within one year of the "date of funding." We will await IRS guidance on the case in which both spouses fund a single gift annuity contract with "legacy" QCDs on different dates.

Q11. But you could use a "legacy" QCD to fund a net income charitable remainder unitrust, and effectively delay distribution until a "makeup" or "flip" event?

A11. The statute does not expressly forbid this. But these kinds of drafting and administrative complexities are rarely justified in a remainder trust holding only \$50k or \$100k.

Q12. Is the full amount of the "legacy" QCD excluded from income, or just the present value of the trust remainder or the gift annuity residuum, *i.e.*, the amount that would otherwise have been deductible?

A12. The full amount is excluded.

Q13. Relatedly, does the full amount of the "legacy" QCD count toward your minimum required distribution?

A13. If you are age 73 or older, yes.

Q14. Since you cannot claim an income tax deduction for the present value of the trust remainder or the gift annuity residuum where the life income vehicle is funded from a "legacy" QCD, and since the entire payout from either vehicle will be taxed as ordinary income, what are the incentives for making these gifts?

A14. First, the entire amount of the "legacy" QCD is excluded from income in the year in which it is made, which is effectively an above the line deduction for itemizers and nonitemizers alike. The distribution does not figure into the calculation of the taxability of Social Security benefits or the amount of Medicare Part B premiums, and it will not push your donor

into a higher marginal rate bracket or into income ranges where the 3.8 percent surtax on net investment income might apply.

Second, although the trust or gift annuity payout will be entirely taxable as ordinary income, the distribution from the IRA would have been as well, but here the tax incidence is spread out over at least twenty years.

Q15. One of the requirements of the outright QCD is that the recipient org be a section 170(b)(1)(A) public charity, expressly excepting a supporting org or a donor advised fund. Do these same exceptions also apply to a "legacy" QCD? In other words,

(a) could the charitable remainderman of a CRT funded with a "legacy" QCD be a supporting org or a donor advised fund, or even a private foundation?

(b) could a supporting org or a donor advised fund sponsor issue gift annuities funded with "legacy" QCDs?

(c) could the residuum of a gift annuity funded with a "legacy" QCD be paid over to a supporting org or a donor advised fund?

A15. In our view, answers to all three of these questions ought to be "yes," in other words, the exceptions for supporting orgs and donor advised funds should not apply to "legacy" QCDs.

While it is possible IRS may take a different view when it issues guidance on these questions, there is nothing in the language of the statute or in the existing legislative history to support that view.

What the Legacy IRA statute literally says is that a taxpayer may elect to treat a distribution from an IRA into a life income vehicle as though it met the requirements of the existing provision for direct QCDs, although clearly it does not. The only express requirements are that the life income vehicle qualify as a charitable remainder trust or a gift annuity for the benefit of the IRA participant and/or her spouse, that the income interest be nonassignable, and in the case of the gift annuity that the payout be at least five percent.

It would have been a simple matter to specify that the trust remainderman, or the issuer of a gift annuity and/or the distributee of the residuum be a section 170(b)(1)(A) public charity other than a supporting org or a donor advised fund, but the statute does not say this.