**Coronavirus Relief (CARES) Act and the New Charitable Giving Rules**
Host: Ted Hart | President & CEO, CAF America
Guest: David Shevlin | Partner, Simpson Thacher

**Announcer:** Learn how to take your caring and giving farther with the *Caring and Funding* podcast powered by CAF America. CAF America, America's leader in cross-border philanthropy helps corporations, foundations, wealth advisers, and individuals who wish to give internationally and with enhanced due diligence in the United States. Through its industry-leading grants management program and philanthropic advisory services, CAF America helps donors amplify their impact and ensure their gifts are made in a safe and effective manner.

This caring and funding podcast is dedicated to these donors and the charities they support. Our guests are leaders in their field who join us to share tips for success and stories that inspire. Our host is Ted Hart, the CEO of CAF America. After the show, you can find all our podcasts at cafamerica.org, on iTunes, and now, just say, "Alexa, play C-A-F America on TuneIn. Now, welcome the host of CAF America's *Caring and Funding* podcast, Ted Hart.

**Ted Hart:** Welcome to this latest edition of the *Caring and Funding* podcast. Last Friday, Congress passed and the president signed into law the Coronavirus Aid Relief and Economic Securities Act, also known as the CARES Act. This response to the COVID-19 global pandemic emergency covered many areas including the tax benefits related to charitable giving.

Generally, there are limitations on deductions to charitable contributions for both individuals and corporate taxpayers based on taxpayers' adjusted gross income in the cases of individuals and taxable income in the case of corporations. This CARES Act increases the limit on individual taxpayers' deductions for cash contributions to public charities from 60% to the individual's adjusted gross income to 100% of the individual's adjusted gross income. This increase effectively suspends the limit of individuals for individuals in 2020.

For corporate payers, the CARES Act increases the income limits on deductions for charitable cash contributions from 10% of the corporation's taxable income to 25% of the corporation's taxable income. These changes allow taxpayers to take a larger deduction for charitable contributions than would normally be available. This is the topic of today's *Caring and Funding* podcast, is to make sure that our listeners have all of the information necessary because there are very specific steps that need to be followed to qualify for these new tax benefits related to charitable giving.

Our guest here today is Dave Shevlin. He's the head of exempt organizations practice at the law firms Simpson Thacher. Dave counsels on a variety of well-known international and domestic exempt organizations including CAF America. He also advises donors, universities, foundations, hospitals, and cultural institutions. Long active in the American Bar Association, Dave is a past chair of the ABA's Section of Taxation Committee on ExemptOrganizations, and he has also served of the board of directors for Doctors Without Borders USA. Welcome here to the *Caring and Funding* podcast, Dave Shevlin.

**David Shevlin:** Thank you very much, Ted. It's good to be here.

**Ted:** Dave, this is a very important topic for all Americans and corporations because these are very generous changes that Congress has made possible, but there are rules that have to be followed. All gifts are not treated the same, and making a gift without knowing the rules will reduce the taxpayer or corporation's capacity to take on these new tax benefits.

Let's start with individuals. There is in this law something that is called the universal deduction. There's a new deduction that's available to all Americans. Help us understand and unpack what that's all about and what the rules are related to that new benefit.

**David:** Alright. There's, I would say, two major categories of charitable giving incentives that were included in the CARES Act for individuals and corporations. With respect to individuals, we have a what we call above the line contribution for individual taxpayers who do not itemize their deductions. They get above the line; meaning, prior to the computation of your adjusted gross income, you get a deduction of up to $300 in cash contributions to certain charitable organizations. I'm going to come back to what we mean by certain charitable organizations in a minute.

This is in addition to what you described at the outset of the call which is for individuals who do not itemize and are making cash charitable contributions, the adjusted gross income limit of 60% has now been increased all the way up to 100%, so you get to charitably deduct all of your adjusted gross income with respect to the charitable contributions that qualify under the rule.

**Ted:** Under both of those, for individuals, whether it's $300-- Perhaps most Americans or those who do itemize, perhaps wealthier Americans, there are these new benefits, but there's also some rules that have to be followed. Are there not?

**David:** That's right. You have to understand the organization that you are making the contribution to because the changes do not apply to charitable contributions that are made to most types of private foundations that we are all familiar with. There are certain limited types of private foundations that would qualify, but by and large, your family foundation, your corporate foundation, the typical private non-operating foundation would not qualify as a recipient.

Supporting organizations under code Section 509(a)(3) are not eligible recipients of these contributions. Without digressing, supporting organizations are a rather small part of our philanthropic field, but there are many supporting organizations out there affiliated with institutions like hospitals and universities, so donors should be aware that they do not qualify.

In addition, contributions to donor advised funds do not qualify, which is why it's very, very important that if you are interested in working with a particular service provider, that the gift be made in a way which is perfectly possible and plausible to do without it being made to a fund that would otherwise be defined as a donor-advised fund under the tax law, if you want to take advantage of these new rules.

**Ted:** Let me ask you about that. For instance, someone who might be working with CAF America and might normally be thinking of putting money into a donor-advised fund, retaining advisory rights to advise those funds at a later date, those would not qualify for the new enhanced benefits under the CARES Act. However, a donor working with CAF America who would want to make a restricted gift to a particular charity that CAF America already has a relationship with, that would qualify for the enhanced benefits under the CARES Act.

**David:** Right. One of the benefits of an institution like CAF America is that it provides its clients and its donors with a number of different types of vehicles, if you will, through which to conduct their charitable giving. Donor-advised fund is one, but not the only type of giving that you can do through CAF America. For example, like you said, donor-advised fund is specifically defined in our tax law as a vehicle through which I, as a donor, retain advise on distributions made out of that fund over the course of time. That would be impermissible.

However, if CAF has already pre-vetted and approved of a particular public charity as a recipient of aid, be it COVID-related or otherwise, and I, as a donor, say, "*I am making a gift to you, CAF America, that is restricted to be used to further your support, your pre-approved support of charity X, Y, Z*." I haven't set up a donor-advised fund. I'm not making any preparatory advisory recommendation, I'm simply making a gift to a charity to you to be used for restricted use, that you have already approved.

That is no different than any other public charity that has decided to raise funds from its donors for a restricted use, such as the University raising funds for a particular course of study or a sports program, or a hospital raising funds for a particular medical program or wing. This is a way in which your clients can work with CAF America to benefit from these tax rules without inadvertently tripping up the restriction against using a DAS.

**Ted:** That's right. It's important in the consideration of a contribution before the contribution is made to have that discussion of whether or not the donor desires to benefit from the enhanced benefits of the CARES Act or not and if they do, then they should be advised to give a restricted gift to a charity we already have a relationship with and therefore that would fit under these new regulations.

Going back to the above the line charitable contribution deduction of up to$300 for individuals that do not itemize, that is a benefit that will survive the immediate time of the year 2020 and the immediate time of hopefully, the COVID global pandemic, that also even beyond the year 2020 that will also have the restriction of needing to be a restricted gift and not a donor-advised gift. Is that correct?

**David:** You are correct. I was going to say, it's really worthy of restating it the way that you said it just now, which is it. If you want to avail yourself of these very generous incentives that have been built into the CARES Act, then CAF America is situated with respect to the offerings that you provide your donors to having a mechanism, but you must be in contact with CAF America say this enhanced deduction, the enhanced AGI limits are important to me.

Then the mechanism is fine. We have pre-vetted and approved charities that you can support and you'll make a restricted gift in support of the charity that we've approved. It's worthy of restating how important it is to work upfront with your relationship adviser CAF America to structure that properly.

**Ted:** Terrific. Dave, I want to thank you for that. We're going to take a quick mid-show break here. When we come back, we're going to get right into the enhanced benefits for corporations, and then wrap up generally, to make sure that everybody has these rules firmly in mind as they're thinking of their charitable contributions going forward, and we'll be right back.

**Announcer:** Remember, our podcasts and archives are always available 24 hours a day at cafamerica.org. If you're listening today, our phone lines are open, call in and ask a question by dialing 914-338-0855. Now, back to the CAF America radio network and our host, Ted Hart.

**Ted:** We're back here with Dave Shevlin, who is the head of exempt organizations practice at the law firm Simpsons Batcher. Dave, before we took that quick break, I mentioned that when we come back we're going to talk about what has changed under the CARES Act for the benefit of corporations who wish to be philanthropically generous, can you share with us what those changes are?

**David:** Corporations are typically limited to deducting charitable contributions up to 10% of the corporation's taxable income and the CARES Act lifts that limit from 10% to 25%. With excesses being carried over in the normal manner in which excess contributions are carried over. This is again another act by Congress to try and incentivize corporate Giving as well, by lifting the ceiling from 10% to 25%. Again, on contributions that qualify in the same manner as they have to qualify for individuals who are making those contributions.

**Ted:** Again, the restriction is that these cannot be donor advised gifts. These cannot be contributions to private foundations, but if they are made as restricted gifts to charities that for instance, CAF America already has a relationship with, then these enhanced benefits for corporations, up to 25% of taxable income is then permissible.

**David:** That's correct.

**Ted:** Now, am I correct that this enhanced deduction is limited to contributions made in 2020? for corporations?

**David:** Yes. certainly.

**Ted:** I wanted to talk to you about one other restriction and have you help us make sure that we understand that under the CARES Act only cash contributions, as opposed to donations of stock, real estate or other non-cash items are permitted, again to charities restricted gifts for individuals and corporations. Is that is that correct?

**David:** That's right. The Act was very specific in limiting the eligibility of these contributions to these enhanced deductions, to cash contributions, contributions of any kind of property, including marketable securities or real assets or otherwise, do not qualify.

**Ted:** Again, as we said at the top of the show, Dave, these are very generous changes to the tax law that allow both individuals and high net worth individuals and corporations to receive more of a benefit for being charitable, the above the line charitable contribution for individuals, just in summary that will survive this act and that up to $300.

For individuals who do not itemize will go forward, but again, that $300 cannot be through a donor-advised mechanism but would need to be a restricted contribution for individuals who do itemize their deduction. The bill permits charitable contribution deduction of up to 100% of their adjusted gross income. Now, what if someone gives more than their Adjusted Gross Income calculation for this year? Can any of that rollover to future years.

**David:** Yes.If you happen to give more than the adjusted gross income limit is it a contribution that qualifies for the 100% AGI limit or another limit or if you are a corporation in the same boat, if you will, then the excess contributions will carry over to succeeding years and operate the normal way that contribution carryovers are used and may be used under the code.

**Ted:** Okay.Again, a tax provision of up to 100% of the adjusted gross income is specific to 2020, but you would be able to roll that forward.

**David** That's correct.

**Ted:** Again, must be a cash contribution cannot be a contribution of marketable securities, as you said real estate or any other non-cash items for it doesn't prohibit you from making those contributions, or even making a contribution to donor advised funds, right now, if you wish, but if you want these enhanced benefits, then these new rules must be followed. Same thing going back to corporations, the enhanced benefit their moves from10% of taxable income to 25% of taxable income, again, must be cash, again, must be this restricted vehicle versus any vehicle that allows the corporate donor to retain any advisory rights, etcetera.

**David:** That was all correctly stated.

**Ted:** Okay, terrific. Well, I'm just in the last couple of minutes that we have here, Dave, just summarize your view of this act you've used the word generous, obviously Congress means to generate more contributions to all sorts of charities. These rules are not restricted only to charities that are providing direct relief for the COVID-19 global pandemic. By any charity that you want to support, you have to do it just right as we outlined here to be able to get the enhanced benefits. Summarize in the way that you would like, I think utilizing the word that you had earlier, how generous this is of Congress.

**David:** I think it's a very important active incentivization by Congress to give both and above the line deduction to encourage as many Americans as possible to give at least $300 above the line without any computation into the adjusted gross income. Then to see the meaning of lifting the adjusted gross income to 100% is essentially communicating to us as a matter of tax policy. We're comfortable with you chipping away all of your money. We won't cap your ability to deduct that for purposes of computing your tax bill. Not all of us have necessarily the means to give away all of our money, but we certainly know plenty of individuals and corporations that do hit their limit.

When you are planning, you often do take your limits into account when planning your giving for a year. When you lift the ceilin, I have a number of clients who are thinking of accelerating giving this year, which is exactly what Congress wanted to do. Because it's not just-- It's like you said not simply COVID-related relief but this is going to be an extraordinary year of need catalyzed by COVID.

For sure, in many ways, but we're seeing and we'll see the philanthropic need across many sectors that are really going to feel the consequences of COVID. People losing their jobs, charities are going to be starved for support whether they are social service organizations, food banks or cultural institutions and museums. I also think it was super important and helpful that Congress didn't try define the category of charities that could be the assisted now to define the type like we've talked about, but not from a programmatic perspective.

**Ted:** I'm sorry. Dave, I want to share a statistic that our listeners may actually find surprising. That is the nonprofit sector taken all together is the third largest industry in the country. We're talking about assets, we're talking about employees, we're talking about a very large part of the American economy is tied up in the success of the nonprofit sector. Did Congress have that in mind when they put forth these generous new limits?

**David:** I would think so. It's such an important engine of our economy as you just pointed out, but has to rely on the generosity of the citizens of this country. We're different than other countries. Our charitable institutions rely heavily on private philanthropy as opposed to the social net of government support. Incentivizing private philanthropy in this fashion is extremely important in order to continue to catalyze such an important engine of our economy.

**Ted:** Dave, following the tax cuts and Job Act of 2017, there were a number of changes including the increase of the standard deduction that for many Americans essentially removed the incentive, the tax incentive to give to charitable organizations. There was a dip in overall giving in the United States because of that. That certainly doesn't bode well if that were to continue. Does it seem to you that these incentives are well timed to try to stem that tide as a third of our economy is essentially at stake?

**David:** That's a good point. The 2017 tax cut and jobs act had a number of provisions which were challenging for the sector. This reflects, I think, a perspective that important meaningful steps. The changes that were made in the CARES Act are not small immaterial window dressing changes to try and have, if you will, a good story to tell that we help charity, but not really helping charity. It's really helping the charity. It should really help charity. I hope it really does help charity by incentivizing in two different ways. Americans across the economic and income spectrum to be able to help the sector as we try and help all of each other make it through a really challenging path.

**Ted:** Dave, I do want to clarify on thing that I just said. Of course, I've meant to refer to the nonprofit sector as the third largest industry in the country. It does represent on an annual basis, more than a trillion dollars to the US economy and that represents just about five and a half percent of the overall US economy. A lot of jobs and a lot of communities rely on the social safety net that's created by many nonprofit organizations. Again, this CARES Act and the incentives for both individuals and corporations is a hopeful sign that perhaps they won't be hit quite as badly.

**David:** Indeed. Let's hope so.

**Ted:** David Shevlin, thank you for being our guest here today on the CARE and funding podcast. We thank you so much for bringing us all the detailed rules that are included in these generous new benefits that are included in the CARES Act. Thank you for being our guest here today.

**David:** My pleasure.

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