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The Thursday Report

July 24, 2014

Find 3 Grammar Errors Edition!

Spot the Typos Answers! ***There were 38 typos in last week's edition, as described below.***

Florida Joins States Having Court Decisions to Allow Same Sex Marriage – Important Considerations for Florida Residents Who Are Already Married in Other States – They May Be Considered as Married Here!

Special Thanks

More on Qualified Longevity Contracts – Having Life Insurance Carriers Take the Risk of People Living Beyond Their Life Expectancy, with Tax Benefits for IRA Owners – Zero Rate of Return if the Person Dies at or Before Their Life Expectance as a Trade-Of, an article by Brandon Ketron and Travis Arango, Part 1

What Estate Planning and Other Lawyers Need to Know About Bankruptcy, an article by Alberto F. Gomez and Alan S. Gassman, Part 4

Quote of the Week

Humor! (or Lack Thereof!)

We welcome contributions for future Thursday Report topics. If you are interested in making a contribution as a guest writer, please email Janine Gunyan at Janine@gassmanpa.com.

This report and other Thursday Reports can be found on our website at www.gassmanlawassociates.com.

Spot the Typos Answers!

We thank all of the many people who responded to our challenge to spot the number of typos we included in last week's Thursday Report. In total, there were 38 typos in the report. No one guessed correctly but some came close. Click here to see last week's report with the changes circled.

We are sending Kentucky Fried Chicken gift certificates to the closest three contestants, and thank you for your support.

It is a little known fact that your brain can process misspellings without you even knowing. If the first letter of a word and the last letter of a word are correct then it does not matter what order the rest of the letters are in. For example:

THE PAOMNNEHAL PWEOR OF THE HMUAN MNID. Aoccdrnig to a rscheearch at Cmabrigde Uinervtisy, it deosn't mttaer in waht oredr the ltteers in a wrod are, the olny iprmoatnt tihng is taht the frist and lsat ltteer be in the rghit pclae. The rset can be a taotl mses and you can sitll raed it wouthit porbelm. Tihs is bcuseae the huamn mnid deos not raed ervey lteter by istlef, but the wrod as a wlohe.

Perhaps that is why no one correctly guessed that there were 38 typos in last week's Thursday Report. Thanks for playing along!

Florida Joins States Having Court Decisions to Allow Same Sex Marriage – Important Considerations for Florida Residents Who Are Already Married in Other States – They May Be Considered as Married Here!

The following article published will be in Steve Leimberg's newsletter service in the next days (or hours). Thanks sincerely to Steve and his primary editor, James Mangar for all of the work they do in helping to make sure that everything that comes through their system is properly vetted.

TO BE PROVIDED

Special Thanks

We thank Jay Adkisson for his expressive praise for a recent Leimberg article that we published:

> "Alan,
>
> > Another great article!
> >
> > Of all the LISI articles, yours are the ones that I'll pull over to the side of the road to read immediately.
> >
> > - Jay"

To which Steve Leimberg responded:

> "Jay,
>
> > That's very nice of you but we are not responsible for any road accidents you may have.
> >
> > Seriously, nothing nice than a brilliant guy taking the time to be thoughtful and complimentary!
> >
> > Warmest,
> >
> > Steve"

We thank both Jay and Steve for their kind words and look forward to publishing future articles with Leimberg Information Services.

Jay Adkisson and his partner Chris Riser are the authors of the best-selling book, *Asset Protection: Concepts & Strategies for Protecting Your Wealth*, that can be purchased by clicking here. [LINK: http://www.assetprotectionbook.com/]

They also have the best website available for reviewing the creditor protection laws of all 50 states, which can be viewed by clicking here. [LINK: http://www.assetprotectionbook.com/forum/index.php]

Also, Jay's nationally recognized website, Quatloos, which details scams and frauds, can be viewed by clicking here. [LINK: http://www.quatloos.com/Q-Forum/index.php]

Hats off to Jay and Chris for everything they have done for the creditor protection and wealth preservation industries.

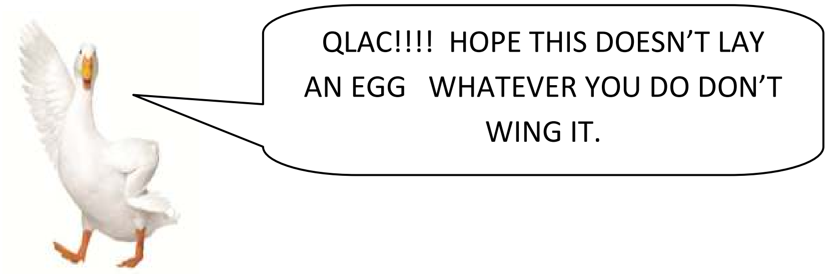
More on Qualified Longevity Contracts – Having Life Insurance Carriers Take the Risk of People Living Beyond Their Life Expectancy, with Tax Benefits for IRA Owners – Zero Rate of Return if the Person Dies at or Before Their Life Expectance as a Trade-Of, an article by Brandon Ketron and Travis Arango, Part 1

We are very pleased that summer law clerks Brandon Ketron, CPA && Travis Arango are writing an analyzing law, financial products, and general situations so well that we have turned them loose this week to create the following article on the new July 1 regulations that permit insurance companies to issue annuity contracts under IRAs that will not count as assets under the minimum distribution rules until payments begin (or age 85 if earlier) and will provide lifetime payments for the IRA holder (and spouse if chosen as an option).

Take it away Brandon and Travis!

The $125,000 question:

Should your clients over age 70 ½ reduce their IRA the minimum distributions by investing in specially designed annuity products?



Introduction:

The insurance industry received a July 4th gift from the Internal Revenue Service in the form of a new regulation released on July 1, 2014 that makes it possible to place IRA and pension plan investments into fixed annuities that will enable the IRA holder or plan participant to avoid the minimum distribution rules that apply after age 70 ½ to the extent that IRA or plan assets are held under such vehicles. The maximum amount that can be contributed into such fixed annuities under an IRA or pension will be the lesser of $125,000 or 25% of the value of the pension or IRA account as of the time of the investment. Basically, the value of such contracts will not be considered to be assets of the IRA or pension for purposes of the minimum distribution rules until the owner is age 85.

None of the life insurance or annuity companies have released their products as of yet.

These rules will also allow QLAC's to be held under 403(b), and 457(b) plans, but not under defined benefit plans or Roth IRA's.

Under the regulations these annuity contracts will not be variable or equity indexed annuities, even if they offer a guaranteed minimum rate of return, unless or until explicitly approved by the Internal Revenue Service. Instead, the products available will be ones with a fixed rate of return, life payment, or other similar contract that can be expected to guarantee a minimum rate of return, and to actually credit a slightly higher rate of return in the same manner that many whole life insurance products now offer. The preamble to the new regulation points out that variable and equity indexed annuities with contractual guarantees provide an unpredictable level of income to the holder and are therefore inconsistent with the purpose of the new regulation.

A typical arrangement would be that a taxpayer could invest $125,000 (the maximum amount that can be invested is the lesser of 25% of the value of the qualified account at the time of the investment or $125,000) into a deferred income annuity contract that would pay-out monthly income at an elected age (not to exceed 85) to the account holder or plan participant.

One very knowledgeable advisor, Michael Morrissey of Vanguard's annuity division gave us the following example of how a hypothetical QLAC might perform.

A 65 year old male who wants to receive a monthly income of $1,000 per month for life beginning at age 80 can pay $47,920 for a life annuity right now. The annuity contract would include not only the above payments, but also a refund on death to the extent that the total payments received before death did not amount to $47,920. The value of this contract would not be subject to the minimum distribution rules until the gentleman reaches age 80.

The new regulations require that payments from a QLAC must begin to be made by age 85. A 65 year old male who wants to receive $1,000 a month for life beginning at age 85 would only have to pay $26,634 for a Vanguard life annuity contract, which would also provide a refund to the extent that total payments are less than $26,634 upon death.

In both of the above arrangements there is a death benefit feature, as is permitted under the new regulations, which will provide that if the account holder dies before receiving payments equal to the amount invested, then the deficit amount will be paid to the account holder's beneficiaries (typically without interest) shortly after death. In the alternative, payments might continue for the lifetime of a surviving spouse who could roll the annuity over to his or her own IRA and continue to have the benefit of payment rights. If the account holder dies before the elected age to begin distributions, the new regulations allow a contract to return only the principal amount invested ($125,000).

Definition of a QLAC According to the New Regulation

A QLAC's premiums paid for the contract cannot exceed the lesser of $125,000 or 25% of the account balance as of the last valuation date preceding the date of a premium payment. This is increased for contributions added to the account and decreased for distributions made from the account after the valuation date but before the premium payment date. The QLAC's value is excluded from the account balance that is used to figure out the required minimum distributions. However, the value of the QLAC is included for applying the 25% limit. The IRS kept the dollar and percentage limit to "constrain undue deferral of distribution of an employee's interest."

If an annuity contract is not a QLAC simply because the premiums for the contract are over the premium limits then the contract will still be a QLAC if the excess premium is returned to the non-QLAC part of the account by the end of the year following the year the excess was paid. This excess can be returned to the account by cash or in an annuity contract that is not intended to be a QLAC. If at any time the QLAC or intended QLAC contract fails for reasons other than exceeding premium limits, the contract will not be treated as a QLAC from the date of the first premium payment.

This dollar limitation will be adjusted in the same time and manner as under section 415(d) except: (1) The base period will be the quarter beginning six months before the effective date of the regulation and (2) Any increase that is not a multiple of $10,000 will be rounded down to the next multiple of $10,000.

The contract must provide for distributions to be made no later than a specific annuity starting date. This date cannot be later than the first day of the month following the employee's age of 85. An employee can elect to have an earlier annuity starting date but the contract is not required to have an option to start distributions before the annuity starting date. The maximum age may be adjusted based on changes in mortality. However, the IRS believes that these changes will not occur more often than the dollar limit adjustment.

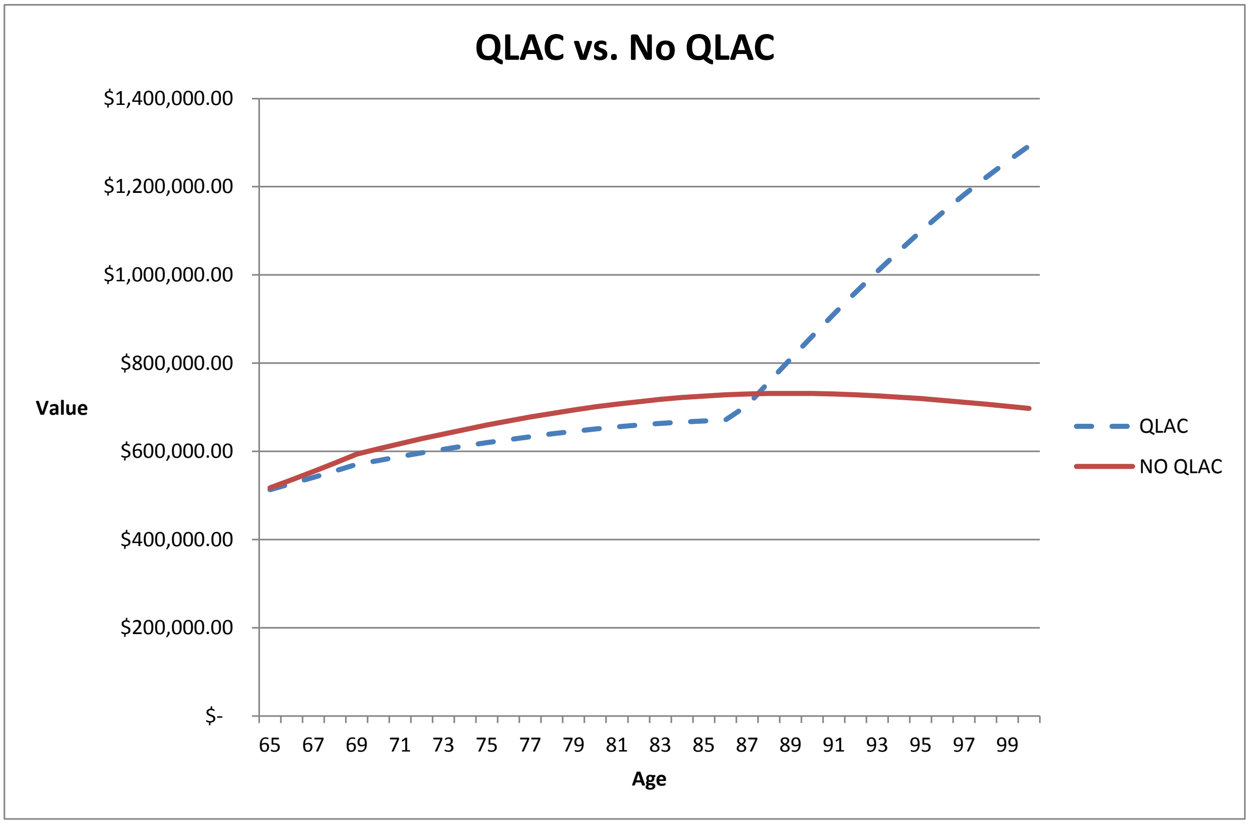
A variable contract under section 817, an indexed contract or, a similar contract do not count as a QLAC but the Commissioner may create an exception to this rule. However, a participating annuity contract is not similar to a variable contract or indexed contract just because it has payments of dividends shown in A-14(c)(3) of section 1.401(a)(9)-6. The regulation also noted that a contract that has a cost-of-living adjustment, discussed in A-14(b) of section 1.401(a)(9)-6, is not considered similar to a contract that is variable or indexed.

Other QLAC requirements will be covered in next week's issue, which should be reviewed carefully.

Hypothetical Example and Chart

We have a prepared a spread sheet that illustrates the use of a QLAC in an IRA. This example assumes that a male age 65 has $500,000 in an IRA that is growing at 3.5%. The male investment the maximum amount of $125,000 into a QLAC, that will provide yearly payments of $51,948 beginning at age 85. When required minimum distributions kick in at the age of 70, the QLAC will not count as part of the IRA balance, resulting in a tax savings of $2,220.73. At the age of 85 when the QLAC will begin to make payments, the individual will have a total tax savings of $40,916.31.

From an investment standpoint, the benefit of investing in a QLAC depends on how long the individual survives. We assumed the same individual did not invest the $125,000 in the QLAC and left the money in the IRA growing at 3.5% in order to compare the two options. For the investment in the QLAC to provide a greater rate of return, the individual would have to live to the age of 88. The longer the individual lives, the greater the rate of return. Below is a chart comparing the two options, and a detailed spreadsheet of the options is available upon request.



Conclusion

This is a complicated regulation that could possibly boost the popularity of longevity annuities as a retirement planning tool. The regulation provides potential tax savings by allowing an individual to delay a portion of required minimum distributions from a retirement plan to the age of 85. There will be doubtless interaction and confusion between these rules and the "stretch trust" minimum distribution rules, which we will analyze and share in the near future.

What Estate Planning and Other Lawyers Need to Know About Bankruptcy, an article by Alberto F. Gomez and Alan S. Gassman, Part 3

We left off describing cases, and, situations, where, courts, have, allowed, planning actions finalized shortly before a bankruptcy to stand, and not be considered as "fraudulent transfers" when clearly performed for business or planning purposes, notwithstanding prejudice to creditors.