Alan Gassman, Ed Morrow, Seaver Brown & Brandon Ketron: Ten Common Portability Mistakes and What You Need To Know To Avoid Them

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The purpose of this newsletter is to allow well-versed planners and those who have recently reviewed the basics of portability to come up to speed more efficiently, while also considering common implications of portability decision-making, with a strong dose of reality. We will highlight some of the common mistakes planners make when it comes to electing portability, as well as some misguided assumptions that may or may not make sense in a number of areas."

Now, **Alan S. Gassman, J.D., LL.M.**, **Edwin P. Morrow, III, J.D., LL.M.**, **Seaver Brown, J.D., MBA and Brandon Ketron, J.D., CPA,** provide members with their commentary on ten common portability mistakes and what advisors need to know to avoid them.

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Miami Florida on April 14th and 15th this year as an advanced program and will feature many well-known authorities, including Barry Engle, Denis Kleinfeld, Howard Fisher, Jerry Hesch and more. His e-mail address is agassman@gassmanpa.com

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Before we get to their commentary, members should note that **Steve Oshins** and **Bob Keebler** will be delivering a webinar on Tuesday, February 2nd at 2pm EST titled the **"10 Best Estate Planning Strategies for 2016."** Topics include: Grantor retained annuity trusts; Formula GPOAs for basis step-up; Charitable remainder trusts; Decanting; Dynasty trusts; Hybrid domestic asset protection trusts; Nongrantor trusts for federal and state income tax shifting; Nonjudicial settlement agreements; "Tax burn" strategies; Incomplete gift non-grantor trusts. The webinar is being hosted by **WealthManagement.com**, and additional information, including how to register, can be found at this link: **10 Best Estate Planning Strategies for 2016**

Now, here is Alan, Ed, Seaver and Brandon's commentary:

EXECUTIVE SUMMARY:

Most planners are familiar with portability and how it works to enable a surviving spouse to make use of the unused estate and gift tax exclusion of the first dying spouse. Nevertheless, in addition to a number of math and tax misconceptions, the impact of new regulations released this summer leave room for the vast majority of estate planners to refine and improve their knowledge and protocols for both the technical and practical aspects of portability. In many cases, a review of some "facts of life" mathematics will be the most important and eye opening processes that a conscientious estate planner can go through to improve results and decrease the risk of undesirable tax and other results for clients. Making decisions without running the numbers will, in many situations, be closely akin to flying in the dark without a gyroscope.

The purpose of this newsletter is to allow well-versed planners and those who have recently reviewed the basics of portability to come up to speed more efficiently, while also considering common implications of portability decision-making, with a strong dose of reality. We will highlight some of the common mistakes planners make when it comes to electing portability, as well as some misguided assumptions that may or may not make sense in a number of areas.

It is the authors' belief that the decision-making and advice given in this area is often flawed. Many practitioners conclude that it would be best for the vast majority of middle aged married Americans with a net worth less than $11,000,000 to leave everything outright to the surviving spouse or possibly a QTIP Trust and rely upon portability. Moreover, there is a further assumption that portability is the only appropriate vehicle for receiving stepped-up income tax basis on the surviving spouse's death. Neither assumption is correct. There are also inaccurate assumptions with respect to the after income tax results of having a full IRA rollover versus the use of Accumulation or Conduit Trusts, which are discussed below.

We have grouped these common errors into ten separate categories, with titles and introductions that can alert the reader as to the content and main emphasis for future reference.

FACTS:

Most American families will never have a surviving spouse whose net worth exceeds $5,450,000, plus future inflation adjustments, so making a portability allowance election after the death of the first dying spouse is often a precaution, as opposed to a requirement.[1] Most planners and clients have a general understanding

of how portability works, but do not fully appreciate the many pitfalls and misconceptions that this article will address.

The authors are aware of five primary reasons that a fiduciary might opt out of portability when filing an estate tax return, or not file an estate tax return altogether to take advantage of the Deceased Spouse's Unused Exemption ("DSUE") amount.

1. **To be mean-spirited or vindictive**. The threat of opting out may be used as a negotiating tactic by executors and family members adverse to the surviving spouse, even if the surviving spouse agrees to pay the costs of filing. This may occur when a surviving spouse with separate children makes either an elective share election, demands homestead entitlement, or makes other demands or claims that are not considered to be "fair or intended" by the children of the first dying spouse who may control the estate. Oftentimes, the first dying spouse will have made changes to his or her estate plan that were not to the liking of the children. Under such circumstances, the surviving spouse will be better poised and protected if there is a written and binding agreement in place to require that the portability allowance be facilitated.

This brings to mind the "**Failure to Require The Election As Legal Obligation of the Successor and Assigns of the Decedent" Mistake.** While many practitioners require the executor of the estate to make the portability allowance election by language in the Last Will and Testament, oftentimes there is no estate to be opened, which may occur if the children of the first dying spouse see this coming and cause all assets to pass by survivorship, pay on death accounts or otherwise. Placing the language in the Revocable Living Trusts of the clients would be a good back stop strategy, but a written agreement that is binding on the successors and assigns of the first dying spouse, coupled with requiring the election under each spouse's Will and Revocable Living Trust would be the safest approach.

2. **To provide a lower profile for basis or other sensitive tax or other issues**. Aggressive, non-spousal beneficiaries, who wish to assume aggressively-high date of death fair market values for income tax basis purposes may prefer not to have the higher levels of scrutiny and documentation that may result from preparing and filing an estate tax return.[2] While the new basis consistency rules under §1014(f) will

not apply to beneficiaries when estate tax returns are not required, reported values still establish a presumption and may prevent executors and potentially other beneficiaries from claiming a higher value for basis purposes later.

In addition, there may be "hidden assets" or prior gifts that would have to be disclosed on the estate tax return under penalties of perjury that fiduciaries and beneficiaries may not want to have to disclose to a surviving spouse or others, such as collectibles and precious coins or metals that a decedent has asked one or more family members to hold, and then own after the decedent's death, in secrecy from other beneficiaries and third parties. These assets may make no difference from a tax liability or reporting threshold standpoint, but may nevertheless be personal and have a confidential existence that may have been important to the decedent and recipients, for reasons known to them.

3. **The executor may not want to risk having to work with or against the IRS decades later if the surviving spouse's death opens up questions about the first to die spouse's DSUE amount.** Should part of the estate be set aside for possible expenses and obligations that may become applicable many years up the road when a portability election estate tax return has been filed?

4. **Many are simply unable or unwilling to accept professional advice and to act upon it, for whatever reason**. It is therefore useful to consider appointment of trust companies or professional fiduciaries, or to at least give the surviving spouse the ability to require that a professional or trust company fiduciary be added as a co-executor, even if this may be at the expense of the surviving spouse.

5. **Receiving bad advice**. Many taxpayers simply receive bad advice and do not realize that doing nothing can be very harmful to the family of the surviving spouse. Layman are well advised to get advice in writing from a qualified tax professional, and to double check by second opinion if there is any doubt. An agreement between the spouses may specify that a board certified or otherwise credentialed professional must be involved to some extent in decision making and giving advice after the death of the first dying spouse

With the above as a backdrop, we can now investigate what common mistakes occur, which often cause one or more of the above actions or inactions. Many of these mistakes deal with misconceptions of professionals, so please think through these carefully to determine how they may apply to you and your clients.

COMMENT:

MISTAKE NUMBER ONE: FAILURE TO FILE AN ESTATE RETURN ON TIME OR ACCIDENTAL OR INTENTIONAL ELECTION OUT OF PORTABILITY IN A TIMELY FILED RETURN.

While the IRS has done a very good job of simplifying the process of making the portability election[3], we predict that thousands of taxpayers and advisors will still be tripped up under the new portability election rules. For the purposes of the making the portability election, relief may be available for small estates that do not file a timely election which is not available for large estates.

By "small estates," we mean estates that are not required to file a federal estate tax return (Form 706) due to the deceased spouse's gross estate being below the $5,450,000 applicable exclusion amount (for decedents dying in 2016), which may be lower if the decedent made taxable gifts during the decedent's lifetime. "Large estates" mean estates that are required to file a federal estate tax return due to the value of the decedent's gross estate exceeding the applicable exclusion amount.

Large and small estates ~~that~~can timely file an estate tax return (i.e., within 9 months following the decedent's death). Large estates can file a Form 4768 before such 9 month deadline to receive an automatic six-month extension to file an estate tax return ~~that has not been completed~~. Small estates may also file a Form 4768 to receive an extension to file an estate tax return, but because of the language used by the Internal Revenue Service small estates, out of an abundance of caution, may want to file the Form 4768 with an explanation of reasonable cause describing why the estate was not able to file the return within the nine months after the decedent's date of death to be certain that the estate will be able to elect portability when the extension is granted. This possible distinction regarding small estates is a result of the language used by the Internal Revenue Service and is explained in greater detail below. Large and small estates also may obtain an automatic six-month extension to amend an estate tax return that has been filed within nine months of the decedent's death to correct errors in the return that had been timely filed. It is therefore essential that advisors be well-versed on when and if an estate tax return

is required to be filed, and what needs to be included in the estate tax return to support a portability "election" when portability is desired.

As further discussed below, in addition to the filing requirements and extensions available to estates, the new basis consistency rules put a heavier burden on those who are required to file federal estate tax returns. They must provide appropriate appraisals or other documentation to confirm values of assets that receive a stepped-up basis on the death of a decedent, because the estate tax return's stated values may be binding for income tax purposes required for calculation of depreciation, and capital gains or losses when such assets are later sold. Families should therefore be apprised early on in the post first death process of the possible need to file a return and to conduct appropriate due diligence and to acquire appropriate valuation verification documentation and appraisals, when needed, to comply with these rules.

There is confusion among many practitioners as to when an estate tax return is required to be filed, especially when there are assets of uncertain value, or previous gifts and debts that reduce net worth under the filing guidelines, so a review of these rules and a summary of how the 9100 relief and Portability Election rules work is as follows:

- Regardless of the size of a decedent's gross taxable estate, in order for a surviving spouse to use their deceased spouse's unused exclusion (DSUE) amount, the decedent's estate must file a federal estate tax return (Form 706).

- For large and small estates, the Form 706 is due 9 months after the decedent's date of death, or 15 months after the decedent's date of death, if an ~~automatic~~ extension of time for filing has been obtained by timely filing a Form 4768.

- Requests for an automatic six-month extension under Regulation 20.6081-1(b) are automatically granted for large ~~and small~~ estates if a Form 4768 is filed before the 9 month due date of the Form 706. The key point here is that to get 20.6081-1(b) automatic relief, a large ~~or small~~ estate must timely file the Form 4768 before the 9th month anniversary of the decedent's death.

- The authors would like to thank Lester Law for sending material to Ed Morrow stating that an automatic six month extension to make a portability election for small estates may be made by timely filing a Form 4768. After reviewing the material, we agree that an automatic six month extension probably is available for estates electing portability that are otherwise not required to file an estate tax return by filing a Form 4768. However, the authors feel that this result is still unclear, because of the language used by the Internal Revenue Service. Out of an abundance of caution, the authors believe that it may be best for an estate electing portability to either (1) file the return within the nine months after the decedent's date of death without relying on the extension of time granted by filing a Form 4768 or (2) file a Form 4768 with an explanation of reasonable cause why the estate tax return could not be timely filed.

The Summary of Comments and Explanation of Revisions published on June 29, 2015, in the Internal Revenue Bulletin 2015-26 stated that the 2012 Temporary Regulations required "every estate electing portability of a decedent's DSUE amount to file an estate tax return within nine months of the decedent's date of death, unless an extension of time for filing has been granted." The use of the word granted seems to imply that the extension is not automatic but is instead discretionary. The BNA Estates, Gifts and Trusts Portfolio 844-4th on Estate Tax states at Section II(B)(1)(a)(1) that an estate electing portability must file an estate tax return within nine months of the decedent's death, unless the IRS has granted the estate an extension to file.

The language of the first three sentences of the Final Regulation 20.2010-2(a)(1) is essentially identical to the language that had been in Temporary Regulation Section 20.2010-2T(a)(1). Although both of the Regulations state that the due date for electing portability is the later of "nine months after the decedent's date of death or the last day of the period covered by an extension (if an extension of time for filing has

been obtained)," the reference to the extension being "granted" in the Summary of Comments and Explanation of Revisions suggests that if such an extension is obtained it is not automatic. The use of the word "granted" may imply that the IRS would provide an extension on the showing of good cause, similar to extensions granted under Treasury Regulation 20.6091-1(c).

Although a good case can be made that small estates electing portability should be allowed to file a Form 4768 for an automatic extension of time to file the estate tax return, and the authors hope that this is correct, because of the uncertainties described above small estates seeking an extension of time past nine months to file an estate tax return may be safest filing a Form 4768 with a statement explaining why the estate tax return could not be filed on time. Then, if the Internal Revenue Service grants the extension, the estate could later show that the extension had been granted based on reasonable cause if it was necessary to demonstrate this rather than relying simply on filing the Form 4768.

- An executor of a small estate must look for relief under Regulation 301.9100 to elect Portability if a Form 706 is not timely filed (within 9 months after the decedent's death ~~and a Form 4768 is not filed within the 9 month period after the decedent's death~~, or 15 months if a 6 month extension is obtained).

- Unfortunately, if a small estate does not timely file a Form 706 after the decedents death, relief under Section 9100-2 will not be available. Section 9100-2 only provides an automatic six-month extension to make certain elections if the applicable return is timely filed. As the IRS notes in the final regulations, "the portability election is deemed to be made by the timely filing of a complete and properly prepared estate tax return." As a result, if the Form 706 is not timely filed and then corrected within the six month period following the unextended due date of the return, then relief under Section 9100-2 will not be available.

- Discretionary extensions to the deadline for filing a Form 706 are available pursuant to Section 9100-3 where a small estate's estate tax return has not been timely filed after the decedent's death. The Section 9100-3 rule is only available to small estates ~~below the exemption amount~~. Unlike the Section 9100-2 relief extension, there is no requirement to have timely filed an estate tax return. To qualify for such "discretionary relief," however, the Taxpayer must prove that (1) they acted reasonably and in good faith, and (2) that the granting of such extension will not prejudice the interests of the government. The relief afforded under Section 9100-3 requires the taxpayer to make a private letter ruling request, and the costs of such relief will be material and will vary based upon income as noted in Appendix A of Revenue Procedure 2016-1. This is in addition to any legal and/or accounting fees an estate may incur when preparing the relief request.

Now, let's explore the effect on portability when the 9 month deadline is missed in three scenarios: (1) when no return is required to be filed; (2) when a return is required to be filed, but it is still within the time frame of a six month extension; and (3) when a return is required to be filed but it is past the due date, or the extended due date if extended.

The final regulations provide that an extension of time to elect portability will not be granted under § 301.9100-3 to any (large) estate that is required to file an estate tax return (because the value of the gross estate equals or exceeds the threshold amount described in § 6018), but may be granted under the rules set forth in §301.9100-3 to (small) estates with a gross estate value below that threshold amount and thus not otherwise required to file an estate tax return.[4]

Therefore, the filing threshold is absolutely crucial for determining when a Form 706 must be filed. When filing is not required, a late filed Form 706 electing for portability to apply may be permitted if the taxpayer can prove that (1) they acted reasonably and in good faith, and (2) that the granting of such extension will not prejudice the interests of the government, as described above. In most cases, reasonable cause can be established if the family can show that there was

reliance upon one or more tax advisors who did not properly advise the family of deadlines or the effect of or need for filing.

In three recent Private Letter Rulings 2015-44017, 44003, and 44001, the estates of three decedents requested relief under Treasury Regulation Section 301.9100-3 because they had all failed to timely file an estate tax return following the decedent's death.[5] The facts of each Private Letter Ruling were fairly similar, in that they each involved decedents who had died on or after January 1, 2011,[6] with gross estates being less than the applicable exclusion amount for that year.

Treasury Regulation Section 301.9100-3 provides the discretionary standards that the IRS will apply to determine whether or not they grant an extension of time to make a portability election. Pursuant to Section 301.9100-3, the taxpayer must provide evidence that they acted reasonably and in good faith, and that the interests of the government will not be prejudiced by granting such relief.[7] Subsection (b)(1) of Section 301.9100-3 provides a list of when the IRS may deem a taxpayer to have acted reasonably and in good faith.[8] Subsection (b)(3) provides instances when such a taxpayer will not be deemed to have acted reasonably or in good faith.[9]

The IRS granted all three of these estates a 120 day extension to file an estate tax return so as to make a portability election to take into account the DSUE amount. Certainly a great many more PLR's of this nature will follow.

Anyone representing a surviving spouse who, for any of the reasons set forth below, may want to have a portability allowance will want to recommend that there be an estate tax return prepared and filed for the first dying spouse, and that the return be reviewed before it is filed to ensure that the estate did not elect out of portability, and properly enumerated and valued the assets not qualifying for the estate tax and charitable deductions.

The return should be carefully prepared, and the backup documentation on ownership and value should be carefully preserved since the IRS will have until the statute of limitations runs on the estate of the surviving spouse to audit the return of the first dying spouse as to the portability allowance. If the estate of

the surviving spouse is not required to file an estate tax return then the statute of limitations may never run.

To provide further detail on estate tax return considerations for families considering use of the portability allowance, a deeper dive into the estate tax return filing requirements, portability implications, and common errors is provided in the footnote below.[10]

The following scenarios illustrate how large estate or small estates can extend the time in which to make a portability election. The examples, which assume the 2016 exemption amount of $5,450,000[11], are as follows:

John Doe never made any lifetime gifts beyond charitable gifts and annual exclusion amounts not exceeding $14,000 per child to his children. He dies in 2016. He has a gross estate of $6 million, part of which is a $1 million home with a mortgage of $600,000 remaining. His net estate after the debt eligible to be deducted under IRC §2053 is $5,400,000, which is below the $5,450,000 applicable exclusion amount for the year he died – his estate will owe no estate tax. However, his estate is *required* to file a Form 706 pursuant to IRC §6018.

If John Doe made a $2,000,000 lifetime gift beyond annual exclusion amounts, and died with a $4,000,000 gross estate with a similar debt, the result would be the same – the filing threshold under IRC §6018 is adjusted for the gift, so there is still a requirement to file a Form 706, even when there is no estate tax due.

By contrast, let's explore the difference between recourse and nonrecourse debt and assume that John paid off his home mortgage, but has a rental property worth $1,000,000, subject to debt of $600,000. If the loan is recourse, the result is exactly the same as above. However, if the loan is non-recourse, the net amount of $400,000 is all that will be included in the gross estate, not $1,000,000 with a $600,000 deduction.[12] Non-recourse debt is debt against the property itself in which the decedent has no personal liability. Therefore, no Form 706 is required. There is some uncertainty about how nonrecourse debt is accounted for under a new law passed this year for basis adjustments under IRC §1014(f).[13]

MISTAKE NUMBER TWO: WRONGFULLY ASSUMING THAT NO ESTATE TAX PLANNING WILL BE NEEDED.

A more profound error is an assumption on the part of a married couple, and often their planners, that they will not have an estate tax issue. In these cases, the married couple and their planners will fail to properly plan for the use of Credit Shelter Trusts, Gifting Trusts, installment sales and other widely available techniques and strategies.

LISI Estate Planning Newsletter #2061, entitled The 28 Million Dollar Mistake, described a couple who had $5,250,000 of investment assets thirty years before the death of the surviving spouse.[14] We calculated the surviving spouses' estate tax liability on the investments, assuming they grew at 10.98%[15], without taking into account savings that could result from ongoing income. The end result, at the life expectancy of the surviving spouse, was an estate valued at $96,663,144 with an estate tax of $31,527,059, when there would have only been a $3,242,857 estate tax had a Credit Shelter Trust (also known as a Bypass or Family Trust) been used on the first death. The authors have found that there is no substitute for simply running the numbers to see what possible results can apply under various scenarios.

This can be exacerbated by the possibility that a surviving spouse might move to a state that imposes estate or inheritance taxes, and even worse that these states may have the tax apply beginning at much lower thresholds than those under the Federal system. How many planners ask a surviving spouse if they plan on moving to live with their children in a state with high estate or inheritance taxes like Oregon, Washington, Maine, Connecticut, Delaware, New York or New Jersey? Since most states do not have an analogous portability provision, failure to utilize the exemption at the first spouse's death may lead to a significantly increased state death taxes. We have seen one family absolutely bar an elderly gentleman from moving from Florida to live near his children up north because it would have cost the family too much in taxes if he had died after moving.

A fairly easy rule of thumb that can be used in the conference room is the Rule of 72, where we can approximate a doubling of value by using the result of 72

divided by the assumed rate of return. Thus, at a 7.2% net rate of return, investments can be expected to double in value every 10 years. However, if we assume inflation at 3%, the credit exemption amount can be expected to double in value only every 36 years, or said another way, can be expected to increase in value by only 34% every 10 years, as shown below in these tables that might appropriately be kept in conference rooms for discussion with clients and advisors.

Year	3%	7.2%	10%
0	$1,000,000	$1,000,000	$1,000,000
1	$1,030,000	$1,072,000	$1,100,000
5	$1,159,274	$1,415,709	$1,610,510
10	$1,343,916	$2,004,231	$2,593,742
15	$1,557,967	$2,837,408	$4,177,248
20	$1,806,111	$4,016,943	$6,727,500
25	$2,093,778	$5,686,822	$10,834,706
30	$2,427,262	$8,050,884	$17,449,402
35	$2,813,862	$11,397,707	$28,102,437

Year	3%	7.2%	10%
0	$3,000,000	$3,000,000	$3,000,000
1	$3,090,000	$3,216,000	$3,300,000
5	$3,477,822	$4,247,126	$4,831,530
10	$4,031,749	$6,012,694	$7,781,227
15	$4,673,902	$8,512,224	$12,531,745
20	$5,418,334	$12,050,830	$20,182,500
25	$6,281,334	$17,060,466	$32,504,118
30	$7,281,787	$24,152,652	$52,348,207
35	$8,441,587	$34,193,121	$84,307,311

Year	3%	7.2%	10%
0	$5,000,000	$5,000,000	$5,000,000
1	$5,150,000	$5,360,000	$5,500,000
5	$5,796,370	$7,078,544	$8,052,550
10	$6,719,582	$10,021,157	$12,968,712
15	$7,789,837	$14,187,040	$20,886,241
20	$9,030,556	$20,084,717	$33,637,500
25	$10,468,890	$28,434,110	$54,173,530
30	$12,136,312	$40,254,419	$87,247,011
35	$14,069,312	$56,988,535	$140,512,184

Factoring in continued earnings and saving rates, and potential windfalls from businesses and inheritances that are received directly, as opposed to in a protective Trust, it is easy to see that many American families will pay millions of dollars in federal estate taxes if proper planning is not implemented. For many families, portability provides a panacea that will result in more estate taxes being paid than would have been the case without portability, most notably because of the errors described in this article.

It is worth mentioning that some clients will conclude that they do not want to gift assets because they worry that they may run out of wealth to support themselves, but at the same time are rightly concerned about federal estate tax. Often the concern is that the wife will live much longer than the husband and that with an asset growth rate of 8% or more will have a large estate tax, while an asset growth rate of 3% could result in running out of assets. We have found that such clients may prefer to have the husband fund a reasonably sized Irrevocable Trust for the wife and his descendants with a Spousal Lifetime Access Trust ("SLAT") that will use a small portion of the husband's exemption, and can grow income tax free by reason of being disregarded for income tax purposes during the husband's lifetime. The husband may even be includable as a beneficiary by Trust Protectors if the Trust is funded in an Asset Protection Trust ("APT") jurisdiction, and the husband's net worth goes below a certain specified level that is less than

expected to occur. If 20% to 30% of a couple's investment assets are held in this manner, then they can be estate tax proof, and also have enhanced creditor protection, and protection of the family assets if the surviving spouse remarries.

MISTAKE NUMBER THREE: LOSING THE PORTABILITY ALLOWANCE BECAUSE OF REMARRIAGE TO A NEW SPOUSE WHO MAY DIE FIRST.

While almost every article and discussion about the portability allowance has described how the DSUE amount can be lost or may change if the surviving spouse remarries and survives a subsequent spouse, very few commentators have emphasized the profound psychological and practical impact that DSUE amounts can have on subsequent relationships, and the prospects of pursuing a happy and fulfilling life by remarrying.

This can work an extreme injustice upon a widow who would have the benefits of a new spouse who can provide her with both financial and emotional support, when she learns that the marriage can cause her children to incur over $2,000,000 of federal estate tax (up to 40% of up to $5.43 million as adjusted portability amount) at the time of her death. That is one heck of a wedding present from the children! People already carry enough guilt when they have lost a spouse, and have done their best to live appropriately in our modern society. Is this a burden that planners want to take credit for having imposed on a widow in the name of simplification, and allowing for a stepped-up basis on the surviving spouse's death that will be of no economic benefit to the widow at all?

Assume the example of a self-sufficient 50-year-old widow, who has a net worth of $2,500,000 after receiving all common assets on the death of her husband. Following his death, she continues to live responsibly, supporting herself from additional earnings, a lifetime pension, and social security benefits. Assume further that in fifteen years, at age 65, her net worth has grown at an annualized average rate of 7.2% to $7,500,000.

At this point she meets the new Mr. Right who proposes that the two of them marry. He seems to be everything she has been missing since losing her first husband fifteen years before, especially compared to some of the gentlemen that she has attempted to date in the interim.

She is also pleased that he has a net worth that exceeds hers, and will conscientiously leave his assets to his four children, one of which has special needs. The other three children are all teachers with a very close relationship to their father, and are very supportive of his decision to marry. Despite all of this, he agrees to support his new wife during the marriage.

Unfortunately, her tax advisors nix the deal, explaining that it will cost her an estimated $2,000,000 in federal estate tax when she dies, given the expected growth of her estate, and her life expectancy.

Compare that to a situation where her first husband could have left $1,125,000 into a Credit Shelter Trust that would have grown to $2,500,000 in ten years, and $3,125,000 in fifteen years. Under this scenario, her remaining personal net worth would have been $4,375,000 when she met Mr. Right at age 65. Through the use of discount gifting and other planning she could have avoided all estate tax exposure, and could have walked the aisle with no trepidation to better enjoy and find fulfillment and financial security in her remaining years with her new Prince Charming.

Going back to whoever planned (or failed to plan) the estate before her first husband died, the concern over a loss of stepped-up basis on half of the marital assets placed in a Credit Shelter Trust on the first death could have been reduced by simply granting a formula power of appointment, or giving an independent fiduciary or Trust Protector the power to give the surviving spouse the right to appoint appreciated assets to creditors of her estate. The result is that a stepped-up basis could be received on the most appreciated assets in the Credit Shelter Trust at the time of her death, to the extent that her estate tax exemption would be sufficient to allow her personal assets and a portion of the assets in the Credit Shelter Trust to pass estate tax-free. Such power of appointment language should be in Credit Shelter Trusts for clients now living, and can be implanted into Credit Shelter Trusts already in existence by court order, Trust Protectors, or an agreement between all beneficiaries, based upon applicable state law.

For example, if planners would have included a formula based power of appointment in the Credit Shelter Trust, highly appreciated stock in the Credit Shelter Trust could be included in the widow's gross estate to the extent that it would not exceed her applicable exclusion amount. This would allow the beneficiaries to receive a step-up in basis. Additionally, the formula power of

appointment can allow for built-in loss property to avoid a step down in basis since it will not be subject to the power or appointment granted to the widow, resulting in significant tax savings. Too many planners are missing the opportunity to facilitate this. [16]

MISTAKE NUMBER FOUR: LOSS OF THE ABILIITY TO SHARE DSUE AMOUNTS WITH A SUBSEQUENT SPOUSE AND HIS OR HER FAMILY.

Gift splitting ability is of great value in the auction of love, when a potential wealthy new spouse would prefer to split gifts and, in effect, subsidize gifting to the wealthier spouse's descendants, who may be preferred over the children of the first marriage for any number of reasons. Unless the surviving spouse is an estate tax attorney, you can easily imagine the conversation that might occur many years after the whole concept of portability might be explained: "Honey, I'd like to give some of my separate property to my kids, can you just sign this tax form so I don't have to pay $2 million in gift tax? It won't cost you anything." Spouses regularly sign joint income tax returns without fully exploring or understanding the ramifications and it's unlikely a Form 709 will be viewed all that differently.

Loss of the DSUE amount by gift splitting (or being predeceased by a second spouse) also reduces the exemption allowance available to the surviving spouse, who might otherwise be given general powers of appointment under Irrevocable Trusts that might exist or be established for the purpose of providing a stepped-up date of death fair market value basis when the surviving spouse dies.

MISTAKE NUMBER FIVE: CRITICISM OF THE "OUTRIGHT TO SPOUSE AND ALLOW DISCLAIMER TO CREDIT SHELTER TRUST" ARRANGEMENT.

A great many planners have determined that it is best for many of their clients to have estate plans that provide outright devises to the surviving spouse, with the spouse having the ability to disclaim the devise within nine months of the decedent's death, resulting in the funding of a Credit Shelter Trust that will benefit the surviving spouse without being subject to federal estate tax on the spouse's death. This gives the surviving spouse nine months after the death of the first dying spouse to decide whether, or to what degree to rely on portability, or to facilitate funding of a Credit Shelter Trust that might be converted to a Clayton

QTIP Trust, as further discussed below.

The authors have three primary problems with respect to this strategy:

1. **Emotionally Challenged Surviving Spouses Must Face Difficult Decisions.** It is well known that surviving spouses are often disoriented after the death of their spouse. Even more concerning, they may not receive or accept sound advice, and may take actions that preclude a qualified disclaimer, and in some cases simply do not disclaim when they should. The default effect of not making a decision is more often the wrong result. It is better to have the more likely result apply if no decision is made, as described below. In addition, accepting control, use or income of or from property that would be disclaimed can foreclose the ability to have a valid disclaimer for estate tax planning purposes, and state law may not permit a disclaimer if the surviving spouse is insolvent.

2. **Must Also Disclaim Powers of Appointment.** Such a disclaimer will not be effective for federal estate tax purposes unless the surviving spouse also disclaims any power of appointment or other right to direct how the Credit Shelter Trust assets will pass on said spouse's subsequent death, unless it is very specifically drafted.[17] This makes it less likely that the spouse will disclaim, and also deprives the family of flexibility and personal accountability, which is disadvantageous to the surviving spouse and most descendants.

3. **Must Wonder For Years to Come If They Made the Right Decision.** Even after the decision is made, surviving spouses will often ruminate and feel guilt and doubt over whether they have made the right decision.

MISTAKE NUMBER SIX: NOT USING THE CLAYTON QTIP ARRANGEMENT TO SAFEGUARD ASSETS AND MAKE USE OF THE FIRST DYING SPOUSE'S GST EXEMPTION.

Many planners are mistakenly not using Clayton QTIP language and providing for assets to pass into a Credit Shelter Trust that can become a Clayton QTIP. The authors strongly prefer having the disposition of assets of the first dying spouse to a Credit Shelter Trust that the surviving spouse, or one or more fiduciaries may retroactively elect to convert to a QTIP Trust within nine months of the decedent's date of death (and, unlike qualified disclaimers, an extension can be granted to allow another six months, for a total of fifteen from date of death). An election that permits different terms for the Trust, depending on whether or not the election is made, is known as a Clayton QTIP election.[18]

A Clayton QTIP Trust can qualify for the Federal Estate Tax Marital Deduction, while protecting the Trust assets (but not the income) from potential future creditors, spouses, and potential improvidence. Further, the surviving spouse will have the right to receive all income, will be required to be the sole lifetime beneficiary, and may direct how the Trust assets pass on such spouse's subsequent death by retaining powers of appointment that can be provided in the Trust documents.

An independent fiduciary can be appointed to have the power to direct that some or all of the Trust assets be paid outright to the surviving spouse, and it is not necessary that this occur within nine months of the decedent spouse's date of death.

The Clayton QTIP Trust also has another very important advantage – it allows for use of the deceased spouse's GST exemption, so that for deaths occurring in 2016 up to $5,450,000 can pass to the Trust, without being considered as owned by the children and grandchildren for federal estate tax purposes when they die.

It can be a huge mistake for an affluent or potentially affluent family to lose the GST exemption of the first dying spouse by having an outright disposition to a surviving spouse. Especially, if instead, the mechanisms and desire to fund a QTIP Trust are not available to the surviving spouse.

Example – Upon the death of husband (first dying spouse), assume that assets are

left to his wife in a Clayton QTIP Trust. The executor can use the Clayton QTIP election to determine how much of the Trust should qualify for the marital deduction, and how much should pass into a Bypass/Credit Shelter Trust. The assets will pass to a Credit Shelter Trust to the extent that the QTIP election is NOT made, which may pass to another Trust or to other beneficiaries without jeopardizing the marital deduction, while the remaining assets will pass to a QTIP Trust for the wife, giving the executor the flexibility to determine the appropriate amount.

As discussed above, the advantage here is that the husband has a $5,450,000 generation skipping tax exemption that enables that amount in assets to be placed into the Clayton Q-TIP Trust on the husband's death (after any needed disclaimer and the Clayton Q-TIP Trust election have been made) and if that $5,450,000 grows to $12,000,000 before the wife dies it can pass to a Trust that can benefit the children without being subject to federal estate tax at the children's level.[19]

MISTAKE NUMBER SEVEN: ASSUMING THE IRS WILL NOT DENY CLAYTON QTIP TREATMENT WHEN IT IS NOT NECESSARY TO AVOID ESTATE TAX ON THE FIRST SPOUSE'S DEATH.

The next mistake is assuming that the IRS will allow the Clayton QTIP Trust to work as intended, when in fact there is perhaps a 3% or greater chance that the IRS will try to use Revenue Procedure 2001-38 to prevent assets that pass to a Marital Deduction Trust from qualifying for the marital deduction when not needed to avoid estate tax. This will reduce the portability allowance by the amount passing to the Marital Deduction Trust. While the vast majority of commentators and estate tax professionals expect that the IRS will not take this position, the law is not so certain, and for reasons described below it will be much safer to use only partial Clayton or other QTIP marital deduction elections, as opposed to full marital deduction elections.

Revenue Procedure 2001-38[20] was issued to save estates that had inadvertently elected the marital deduction for QTIP Trusts that were intended to work as Credit Shelter Trusts to avoid Federal Estate Tax on the death of the surviving spouse. Oftentimes, the Will or Trust of the first dying spouse would provide that a Trust which would pay all income to the surviving spouse would be formed, with the intent being that all or a portion of such Trust could avoid estate tax on the surviving spouse's death by acting as a Credit Shelter Trust. Unfortunately, many

estate tax return preparers erroneously elected marital deduction treatment for the entire Trust, which caused the intended Credit Shelter Income Trust to be estate taxable on the surviving spouse's death. Fortunately, for those wishing to have QTIP Trusts qualify for the marital deduction in portability planning, the Revenue Procedure provides that it will not apply unless a full marital deduction election is made, and will not apply where there is a partial election. Until this issue is cleared up, it will be safest to make partial QTIP marital deduction elections, even though that may leave an otherwise intended Clayton QTIP Trust with some small, but material, part thereof that will be treated as a Credit Shelter Trust.

To explain further for those who may wish to have more background and history we can start with an example where the first spouse died when the exemption amount was only $1,000,000 in 2003, and left $1,800,000 into a QTIP Trust. The best planning would have been to elect for only $800,000 to qualify for the marital deduction, and to have the $1,000,000 amount applied to enable that portion of the QTIP Trust to not qualify for the marital deduction, and to instead not be subject to federal estate tax on the surviving spouse's death. But commonly estate tax return preparers were accidentally, or from ignorance, electing for a full $1,800,000 marital deduction, which caused loss of the first dying spouse's $1,000,000 exemption, and was therefore expected to cost the family significant estate tax, since all QTIP assets would be subject to estate tax on the surviving spouse's death. Back then there was no portability allowance, and the capital gains tax rate was only 15%, so the basis step-up that occurs on the part of the QTIP that qualified for the marital deduction was not as important.

As indicated above, the faulty excess election meant that any qualified property used in conjunction with this election would then be included in the surviving spouse's gross estate.[21] Further, had the spouse disposed of any income interest from the part of the QTIP that qualified for the marital deduction, then all assets in the marital deduction QTIP would be subject to a gift tax.[22]

Now, on the same facts, the family may wish to make a QTIP marital deduction election for the full $1,800,000, but the Revenue Procedure may be applied by the IRS to prevent this. In such circumstances, it would be safer to make a partial QTIP election so that there would be a $100,000 Credit Shelter Trust portion and a $1,700,000 marital deduction portion.

LISI authors **Austin Bramwell**, **Brad Dillon** and **Lisi Mullen** explained in their

excellent 2013 Estate Planning Newsletter #2100 on this topic that "the IRS does not have and has not actually claimed the power to disregard a valid prior QTIP election. So long as the taxpayer does not seek the relief described in the Procedure, a prior QTIP election must be respected."[23] Any planner will be well served by carefully reading their well-reasoned analysis, but IRS positions are not always as well reasoned as LISI Letters!

Howard Zaritsky has urged caution, and shared the following thoughts with us on this Revenue Procedure, and its impact on QTIP elections going forward:

> I expect that they will allow [a full QTIP marital deduction, if not needed to avoid estate tax], but I remain concerned until formal notice is given.
>
> The language of Revenue Procedure 2001-38 suggests that the relief must be sought affirmatively by the surviving spouse's executor, and that it does not operate automatically. I recall, however, the fight over the regulations under Section 2040, dealing with the estate taxation of certain jointly owned property. Treasury Regulation Section 20.2040-1(a)(2) states that "[t]he entire value of jointly held property is included in a decedent's gross estate, unless the executor submits facts sufficient to show that property was not acquired entirely with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner or owners by gift, bequest, devise, or inheritance.
>
> It was argued that the Regulations, under Section 2040, allowed the executor of the first co-owner's estate to decide whether or not to include the entire property in the estate (and obtain the Section 1014 basis increase), merely by declining to show contribution by the surviving co-owner.
>
> They had a slight problem, however, because Section 2040(a) itself states that inclusion occurs except to the extent that the property may be shown to have

> originally belonged to the surviving co-owner. Some courts held that the entire property was includible unless the executor showed contribution by the survivor.[24]
>
> The IRS' arguments in those cases, and the Tax Court's view suggests that, despite the language of Revenue Procedure 2001-38 that appears to place the burden of negating the effect of the QTIP election on the executor of the surviving spouse's estate, the IRS may be able to raise this issue affirmatively.

So, stay tuned, and let's hope for the best on this.

MISTAKE NUMBER EIGHT: FAILURE TO FUND A CREDIT SHELTER TRUST WITH JOINT ASSETS AND ASSETS BELONGING TO THE SURVIVING SPOUSE AS PERMITTED UNDER COMMUNITY PROPERTY TRUSTS, AS INDICATED IN TAM 9308002 AND PLR'S 200101021, 200210051, AND 2004403094: THE JEST CONVERSATION.

A primary error made by many planners is to not consider the possibility of funding a Credit Shelter Trust with joint assets, as well as assets that would otherwise belong to a surviving spouse. This can be done by using established techniques to obtain a stepped-up basis on the first death, and full or at least greater funding of the Credit Shelter Trust, so as to assist in better avoidance of federal estate tax and have a larger after-tax value of assets to support the surviving spouse.

The planner should keep in mind that his or her primary clients are the married couple being planned for, and not necessarily their descendants. It is far more important to have a stepped-up basis on the first death, which can then enable the surviving spouse to sell assets as needed for spending or other purposes, without also paying capital gains and depreciation recapture taxes that could have been avoided.

Getting a step-up in basis on the first death, and having the increased basis assets held in a creditor, next spouse, and estate tax protected Credit Shelter Trust will provide far better protection and flexibility for the surviving spouse than receiving

a half funded Credit Shelter Trust, a portability allowance that might be lost as the result of re-marriage, and no step-up in basis for the assets and half interests in assets owned by the surviving spouse.

The above result may be achieved by placing all assets into the name of the Revocable Living Trust of the spouse who will die first, if such death can be predicted, or by using a Community Property Trust with JEST provisions, or a JEST Trust or similar arrangement.

A full discussion of Community Property Trusts and JEST Trusts is beyond the scope of this article, but can be found in articles that have been published in the past by this publication, which are available upon request from the authors.[25]

Alaska has had Community Property Trusts that can provide a full step-up in basis to a first dying spouse, and also creditor protection benefits since 1998, and Tennessee passed legislation to provide the equivalent benefit in 2010.[26] Commentators have uniformly concluded that clients residing in any state can elect to have their assets qualified for the Community Property Trust basis step-up by making use of these state laws by establishing a Trust situsedin that state.[27]

The JEST Trust arrangement, first written about in 2013,[28] is designed to provide a full step-up in basis and funding of a Credit Shelter Trust on the first death, and has been commented upon favorably by a number of authors.

MISTAKE NUMBER NINE: FAILURE TO PRESERVE THE PORTABILITY ALLOWANCE BY USING IRREVOCABLE LIFE INSURANCE TRUSTS.

Until 2012, it was common to have life insurance owned by the insured spouse and payable to the Bypass Trust when other assets were not sufficient to fully use the first dying spouse's exemption. Presently, however, this causes the loss of a portability allowance, and will basically cost the estate of the surviving spouse as much as 40% of the death benefit amount in estate taxes on the death of the surviving spouse.[29]

Example – Harry and Wilma are both 40 years old and have a $4,500,000 net worth, consisting of a $500,000 home and $4,000,000 of joint investment assets. They each have $2,000,000 life insurance policies payable to their respective

Revocable Living Trusts. If on Harry's death the proceeds from his life insurance policy and half of the joint investment assets passed into a Credit Shelter Trust that will not be subject to estate tax on the second death, then the Credit Shelter Trust would have been funded with $4,000,000 worth of assets. Wilma will have a $5,450,000 estate tax exemption that will grow with the Consumer Price Index, and another $1,450,000 portability allowance that will not grow with inflation.

Now assume instead that the $2,000,000 life insurance policy on Harry's death was in an Irrevocable Life Insurance Trust. Wilma will be in a similar financial position, but her portability allowance would now be $3,450,000, since the irrevocable life insurance is not considered as part of Harry's estate. Wilma will save an additional $800,000 in estate taxes on her death as a result of taking advantage of the benefits of an Irrevocable Life Insurances Trust. In other words, the amount of life insurance proceeds multiplied by the estate tax bracket on the surviving spouse's death can be the amount of additional estate tax resulting from not having an Irrevocable Life Insurance Trust.

Notwithstanding this concern, planners need to weigh whether it is the best use of annual gift allowances to gift to Irrevocable Life Insurance Trusts where clients would otherwise gift to vehicles that may yield much better results in the long run.

Where clients have estate tax concerns, and wish to make use of their $14,000 per donee gifting exclusion, they are typically best served by gifting non-voting member interests, limited partnership interests, or other assets that have valuation discount characteristics. This will be much more effective than life insurance with respect to maximizing the inheritance of descendants, if the clients will live to their normal life expectancies.

Life insurance can be paid for by split-dollar advances that can be made by the clients, or a family LLC or limited partnership, based upon the applicable federal rate in effect at the time of each premium payment. The long-term applicable federal rate will be used if the insured has a life expectancy exceeding nine years, while the mid-term applicable federal rate will be used if the insured has a life expectancy of greater than three years, but not exceeding nine years. Finally, the short-term applicable federal rate will be used for advances made while the insured has less than a three-year life expectancy. With a second-to-die life insurance policy, the joint life expectancy of the married couple will be longer than the life expectancy of either insured individually.

The split-dollar agreement should provide that each separate premium payment is considered to be a separate loan for purposes of establishing, and then tracking the interest rate applicable thereto. No payments need to be made on the loan until the life insurance policy pays the death benefit, is cashed in, or is borrowed upon.

MISTAKE NUMBER TEN: THE ASSUMPTION THAT IRA AND QUALIFIED PLAN BENEFITS SHOULD ALWAYS BE ROLLED OVER BY A SURVIVING SPOUSE WHO COULD OTHERWISE BE THE BENEFICIARY OF A CONDUIT OR ACCUMULATION TRUST.

The next category of significant portability mistakes involves the assumption that pension, IRA, and other "income in respect of a decedent" assets give cause to not fund a Credit Shelter or QTIP Trust because income tax planning for the surviving spouse is thought to dictate otherwise. This is not always the case, and even when it is the case, the difference in results is not nearly as profound as many would think. In addition, if there is no QTIP as described above, there will be a loss of the use of a GST exemption of the first dying spouse, and quite often the after tax results of using a Conduit/QTIP Trust will be almost identical to the use of an outright disposition, especially if the surviving spouse is expected to spend at the rate of distribution.

Many planners seem to have the impression that money paid out of a pension or IRA account to a Trust are somehow lost forever, taxed completely out of existence, or that it is much better to allow tax deferred growth to occur for IRA balances, which will be taxed as high as 39.6% when withdrawn. Despite all of this, planners routinely fail to recognize that the 60.4% remaining after taxes can be invested in either municipal bonds that have no taxable income, and/or low activity equities that will have the advantage of the 20% top bracket for qualified dividends and any realized capital gains, and a possible stepped-up basis for non realized capital gains on the death of the surviving spouse. For example, an IRA holding stock in a company that pays no dividends worth $1,000,000 could distribute the stock now, at a cost of $398,000 in taxes, and then if the remaining $602,000 of stock is held for 20 years and triples in value, it will be worth $1,806,000 and there will be no capital gains tax on sale after death because of the stepped-up basis rules. On the other hand, if kept in the IRA for the 20 years it will be worth $3,000,000, but then taxed at $1,188,000, leaving $1,812,000, which is only $6,000 less than in the example above. If there is a large chance of a surviving spouse abusing a rollover IRA, that that could otherwise be a

safeguarded IRA payable to a Conduit or Accumulation Trust, this should certainly be considered.

It is also noteworthy that investments purchased with IRA distributions will have a tax basis equal to the purchase price paid at the time of reinvestment. Furthermore, IRA distribution rules may allow in-kind distributions of stocks, bonds and mutual funds to save on sale and repurchase expenses that are otherwise incurred when IRA investments are sold, cash distributed, and replacement investments are purchased.

On the other hand, the maximum federal income tax bracket of 39.6% on pension and IRA distributions to a Complex Trust that does not distribute them to beneficiaries is reached at the $12,400 level of taxable income for 2016. Obviously, the actual situation of the client needs to be closely evaluated after the death of the first dying spouse to determine what option works best. Hopefully, the planner has facilitated this with appropriate and flexible planning techniques. Some of these techniques may include having the IRA and pension accounts payable to the surviving spouse with the contingent beneficiary being a Clayton QTIP Trust that can be converted to a Credit Shelter Trust within nine months of the first spouse's death, which can then qualify as a Conduit Trust or an Accumulation Trust, depending upon which one is chosen.

With a Conduit Trust, a trustee is required to pay the beneficiary any required minimum distribution amount that it receives after the participant's death and during the beneficiary's lifetime. In a sense, it does not allow a trustee to *accumulate* the plan's required minimum distributions in trust. On the other hand, if the Trust document does allow the trustee to accumulate required minimum distributions, such that they are not paid out until some later date, then it is an Accumulation Trust.

In addition, many surviving spouses will need or prefer to live in whole or in part from IRA or pension distributions. As a result, if the IRA and pension rights are not held in trust, the descendants or other preferred beneficiaries of the first dying spouse may not inherit these funds by reason of improvidence, lack of proper conduct in favor of the children of the surviving spouse, or improper management.

If the IRA is a significant part of what is to be held for the benefit of the surviving

spouse, and also a significant part of what is intended to be eventually inherited by the children of the first dying spouse, it can make sense to leave the IRA in an Accumulation Trust, and less sense to leave it in a Conduit Trust, by reason of the numbers described below.

The four columns below show the minimum distribution percentages of value that will need to be satisfied to avoid the 50% failure to distribute penalty, for a 50 year old surviving spouse after the death of the first spouse to die:

Year	Age	Rollover IRA RMD Percentage	Conduit RMD Percentage if Deceased Spouse Died Before 70.5	Conduit RMD Percentage if Deceased Spouse Died After 70.5	Accumulation Trust RMD Percentage
0	50	0%	0%	2.92%	2.92%
1	51	0%	0%	3.00%	3.01%
2	52	0%	0%	3.10%	3.11%
3	53	0%	0%	3.18%	3.21%
4	54	0%	0%	3.28%	3.31%
5	55	0%	0%	3.38%	3.42%
6	56	0%	0%	3.48%	3.55%
7	57	0%	0%	3.58%	3.68%
8	58	0%	0%	3.70%	3.82%
9	59	0%	0%	3.83%	3.97%
10	60	0%	0%	3.97%	4.13%
11	61	0%	0%	4.10%	4.31%
12	62	0%	0%	4.26%	4.50%
13	63	0%	0%	4.41%	4.72%
14	64	0%	0%	4.59%	4.95%
15	65	0%	0%	4.76%	5.21%
16	66	0%	0%	4.95%	5.49%
17	67	0%	0%	5.15%	5.81%
18	68	0%	0%	5.38%	6.17%
19	69	0%	0%	5.62%	6.58%
20	70	3.65%	5.88%	5.88%	7.04%
21	71	3.77%	6.13%	6.13%	7.58%
22	72	3.91%	6.45%	6.45%	8.20%
23	73	4.05%	6.76%	6.76%	8.93%
24	74	4.20%	7.09%	7.09%	9.80%
25	75	4.37%	7.46%	7.46%	10.87%
26	76	4.55%	7.87%	7.87%	12.20%
27	77	4.72%	8.26%	8.26%	13.89%
28	78	4.93%	8.77%	8.77%	16.13%
29	79	5.13%	9.26%	9.26%	19.23%
30	80	5.35%	9.80%	9.80%	23.81%
31	81	5.59%	10.31%	10.31%	31.25%
32	82	5.85%	10.99%	10.99%	45.45%
33	83	6.13%	11.63%	11.63%	83.33%
34	84	6.45%	12.35%	12.35%	100.00%
35	85	6.76%	13.16%	13.16%	0%

As shown in the first column above, no distributions will need to be made in a rollover IRA until the surviving spouse reaches age 70-1/2; however, all growth within the IRA will eventually be taxed at ordinary income tax rates. Compare this treatment to the growth on money reinvested under an Accumulation Trust, or by the surviving spouse under a Conduit Trust, in which both will largely be subject to a 20% maximum rate that applies to qualified dividends and capital gains. Furthermore, the proceeds from the distributions from Accumulation and Conduit Trusts can also be subject to a 0% capital gains tax rate, to the extent that growth in the value of securities or mutual fund components are kept until the death of the surviving spouse, which will also receive the added benefit of a stepped-up basis.

The assumption that there is a big difference between a rollover IRA payout and a Conduit Trust or Accumulation Trust payout is often inaccurate, especially where the surviving spouse is age 70 or older. The authors have run a number of spreadsheets that are available to readers with some of them being as described below. The first set of spreadsheets below illustrate these differences for a 70 year old surviving spouse who inherits a $1,000,000 IRA that will grow annually at 6%. We further assumed that the surviving spouse has a life expectancy of 29 years and that all amounts withdrawn from the plan would be reinvested at an after-tax growth rate of 5.3%.

Spreadsheets that were used to determine these amounts, and which can be downloaded and manipulated as desired, can be obtained by e-mailing **agassman@gassmanpa.com**.

The following chart shows the total IRA and investment account balances after a 30% downward adjustment in the value of the IRA account, to reflect that it will be fully taxable when eventually distributed. We also assumed that the separate account funded with after income tax withdrawals would receive a fair market value income tax basis on the death of the surviving spouse, so that there would be no tax on the unrealized appreciation.

Age	Rollover IRA	Conduit Deceased Spouse Over 70.5	Accumulation IRA
70	$738,496	$736,353	$736,353
75	$962,062	$944,620	$942,486
80	$1,250,824	$1,210,755	$1,192,056

85	$1,639,622	$1,573,550	$1,484,752
90	$2,138,906	$2,037,703	$1,902,221
95	$2,779,075	$2,635,745	$2,463,068

More detail from this chart is as follows:

ROLLOVER IRA

		1	2	3	4	5	6	7	8	9	10
Year	Age	Beginning Balance	Growth at 6%	RMD Amount	RMD Tax at 39.6% for First 10 Years and 33% After	End of Year IRA Balance (1 + 2 + 3)	Withdrawn Amount Left (3 - 4)	Growth on Total Withdrawn (8) at 5.3%	Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)	Total IRA and Investment Account Balance (5 + 8)	Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)
0	70	$1,000,000	$60,000	($36,496)	($14,453)	$1,023,504	$22,044	$0	$22,044	$1,045,547	$738,496
1	71	$1,023,504	$61,410	($38,623)	($15,295)	$1,046,291	$23,328	$1,168	$46,540	$1,092,831	$778,944
2	72	$1,046,291	$62,777	($40,871)	($16,185)	$1,068,198	$24,686	$2,467	$73,693	$1,141,891	$821,431
3	73	$1,068,198	$64,092	($43,247)	($17,126)	$1,089,043	$26,121	$3,906	$103,720	$1,192,762	$866,050
4	74	$1,089,043	$65,343	($45,758)	($18,120)	$1,108,627	$27,638	$5,497	$136,855	$1,245,482	$912,894
5	75	$1,108,627	$66,518	($48,412)	($19,171)	$1,126,733	$29,241	$7,253	$173,349	$1,300,082	$962,062
6	76	$1,126,733	$67,604	($51,215)	($20,281)	$1,143,122	$30,934	$9,187	$213,470	$1,356,592	$1,013,656
7	77	$1,143,122	$68,587	($53,921)	($21,353)	$1,157,789	$32,568	$11,314	$257,352	$1,415,141	$1,067,804
8	78	$1,157,789	$69,467	($57,034)	($22,585)	$1,170,222	$34,448	$13,640	$305,440	$1,475,662	$1,124,596
9	79	$1,170,222	$70,213	($60,011)	($23,765)	$1,180,424	$36,247	$16,188	$357,876	$1,538,299	$1,184,172
10	80	$1,180,424	$70,825	($63,124)	($20,831)	$1,188,125	$42,293	$18,967	$419,136	$1,607,261	$1,250,824
11	81	$1,188,125	$71,288	($66,376)	($21,904)	$1,193,037	$44,472	$22,214	$485,822	$1,678,859	$1,320,948
12	82	$1,193,037	$71,582	($69,768)	($23,024)	$1,194,851	$46,745	$25,749	$558,315	$1,753,166	$1,394,711
13	83	$1,194,851	$71,691	($73,304)	($24,190)	$1,193,238	$49,113	$29,591	$637,020	$1,830,258	$1,472,286
14	84	$1,193,238	$71,594	($76,983)	($25,404)	$1,187,849	$51,579	$33,762	$722,360	$1,910,210	$1,553,855
15	85	$1,187,849	$71,271	($80,260)	($26,486)	$1,178,860	$53,774	$38,285	$814,420	$1,993,280	$1,639,622
16	86	$1,178,860	$70,732	($83,607)	($27,590)	$1,165,985	$56,017	$43,164	$913,601	$2,079,585	$1,729,790
17	87	$1,165,985	$69,959	($87,014)	($28,715)	$1,148,930	$58,299	$48,421	$1,020,321	$2,169,251	$1,824,572

18	88	$1,148,930	$68,936	($90,467)	($29,854)	$1,127,399	$60,613	$54,077	$1,135,011	$2,262,410	$1,924,190
19	89	$1,127,399	$67,644	($93,950)	($31,003)	$1,101,093	$62,946	$60,156	$1,258,113	$2,359,206	$2,028,878
20	90	$1,101,093	$66,066	($96,587)	($31,874)	$1,070,571	$64,713	$66,680	$1,389,506	$2,460,077	$2,138,906
21	91	$1,070,571	$64,234	($99,127)	($32,712)	$1,035,679	$66,415	$73,644	$1,529,565	$2,565,244	$2,254,540
22	92	$1,035,679	$62,141	($101,537)	($33,507)	$996,282	$68,030	$81,067	$1,678,662	$2,674,944	$2,376,059
23	93	$996,282	$59,777	($103,779)	($34,247)	$952,280	$69,532	$88,969	$1,837,163	$2,789,443	$2,503,759
24	94	$952,280	$57,137	($104,646)	($34,533)	$904,770	$70,113	$97,370	$2,004,646	$2,909,416	$2,637,985
25	95	$904,770	$54,286	($105,206)	($34,718)	$853,851	$70,488	$106,246	$2,181,380	$3,035,231	$2,779,075
26	96	$853,851	$51,231	($105,414)	($34,787)	$799,668	$70,627	$115,613	$2,367,620	$3,167,288	$2,927,388
27	97	$799,668	$47,980	($105,219)	($34,722)	$742,429	$70,497	$125,484	$2,563,601	$3,306,030	$3,083,301
28	98	$742,429	$44,546	($104,567)	($34,507)	$682,407	$70,060	$135,871	$2,769,532	$3,451,939	$3,247,217
29	99	$682,407	$40,944	($101,852)	($33,611)	$621,500	$68,241	$146,785	$2,984,558	$3,606,058	$3,419,608

CONDUIT TRUST WITH DECEASED SPOUSE OVER 70.5

		1	2	3	4	5	6	7	8	9	10
Year	**Age**	**Beginning Balance**	**Growth at 6%**	**RMD Amount**	**RMD Tax at 39.6% for First 10 Years and 33% After**	**End of Year IRA Balance (1 + 2 + 3)**	**Withdrawn Amount Left (3 - 4)**	**Growth on Total Withdrawn (8) at 5.3%**	**Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)**	**Total IRA and Investment Account Balance (5 + 8)**	**Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)**
0	70	$1,000,000	$60,000	($58,824)	($23,294)	$1,001,176	$35,529	$0	$35,529	$1,036,706	$736,353
1	71	$1,001,176	$60,071	($61,422)	($24,323)	$999,825	$37,099	$1,883	$74,511	$1,074,336	$774,389
2	72	$999,825	$59,990	($64,505)	($25,544)	$995,310	$38,961	$3,949	$117,421	$1,112,731	$814,138
3	73	$995,310	$59,719	($67,251)	($26,631)	$987,778	$40,619	$6,223	$164,264	$1,152,042	$855,708
4	74	$987,778	$59,267	($70,055)	($27,742)	$976,989	$42,313	$8,706	$215,283	$1,192,273	$899,176
5	75	$976,989	$58,619	($72,910)	($28,872)	$962,699	$44,037	$11,410	$270,731	$1,233,430	$944,620
6	76	$962,699	$57,762	($75,803)	($30,018)	$944,658	$45,785	$14,349	$330,865	$1,275,522	$992,125
7	77	$944,658	$56,679	($78,071)	($30,916)	$923,266	$47,155	$17,536	$395,555	$1,318,822	$1,041,842
8	78	$923,266	$55,396	($80,988)	($32,071)	$897,674	$48,917	$20,964	$465,437	$1,363,111	$1,093,808

9	79	$897,674	$53,860	($83,118)	($32,915)	$868,417	$50,203	$24,668	$540,308	$1,408,725	$1,148,200
10	80	$868,417	$52,105	($85,139)	($28,096)	$835,383	$57,043	$28,636	$625,987	$1,461,370	$1,210,755
11	81	$835,383	$50,123	($86,122)	($28,420)	$799,384	$57,702	$33,177	$716,866	$1,516,250	$1,276,435
12	82	$799,384	$47,963	($87,844)	($28,989)	$759,502	$58,856	$37,994	$813,716	$1,573,218	$1,345,368
13	83	$759,502	$45,570	($88,314)	($29,144)	$716,758	$59,171	$43,127	$916,013	$1,632,772	$1,417,744
14	84	$716,758	$43,005	($88,489)	($29,201)	$671,275	$59,287	$48,549	$1,023,850	$1,695,125	$1,493,742
15	85	$671,275	$40,277	($88,326)	($29,147)	$623,226	$59,178	$54,264	$1,137,292	$1,760,518	$1,573,550
16	86	$623,226	$37,394	($87,778)	($28,967)	$572,841	$58,811	$60,276	$1,256,380	$1,829,221	$1,657,369
17	87	$572,841	$34,370	($85,499)	($28,215)	$521,713	$57,284	$66,588	$1,380,252	$1,901,965	$1,745,451
18	88	$521,713	$31,303	($82,812)	($27,328)	$470,204	$55,484	$73,153	$1,508,889	$1,979,093	$1,838,032
19	89	$470,204	$28,212	($79,696)	($26,300)	$418,721	$53,396	$79,971	$1,642,256	$2,060,977	$1,935,361
20	90	$418,721	$25,123	($76,131)	($25,123)	$367,713	$51,008	$87,040	$1,780,304	$2,148,017	$2,037,703
21	91	$367,713	$22,063	($70,714)	($23,336)	$319,062	$47,378	$94,356	$1,922,038	$2,241,100	$2,145,382
22	92	$319,062	$19,144	($65,115)	($21,488)	$273,091	$43,627	$101,868	$2,067,533	$2,340,624	$2,258,697
23	93	$273,091	$16,385	($59,368)	($19,591)	$230,109	$39,776	$109,579	$2,216,889	$2,446,997	$2,377,965
24	94	$230,109	$13,807	($53,514)	($17,660)	$190,402	$35,854	$117,495	$2,370,238	$2,560,639	$2,503,519
25	95	$190,402	$11,424	($46,439)	($15,325)	$155,386	$31,114	$125,623	$2,526,975	$2,682,361	$2,635,745
26	96	$155,386	$9,323	($40,891)	($13,494)	$123,818	$27,397	$133,930	$2,688,302	$2,812,120	$2,774,974
27	97	$123,818	$7,429	($34,394)	($11,350)	$96,853	$23,044	$142,480	$2,853,826	$2,950,679	$2,921,623
28	98	$96,853	$5,811	($28,486)	($9,400)	$74,178	$19,086	$151,253	$3,024,164	$3,098,342	$3,076,089
29	99	$74,178	$4,451	($23,928)	($7,896)	$54,701	$16,032	$160,281	$3,200,477	$3,255,177	$3,238,767

ACCUMULATION TRUST

		1	2	3	4	5	6	7	8	9	10
Year	**Age**	**Beginning Balance**	**Growth at 6%**	**RMD Amount**	**RMD Tax at 39.6% for First 10 Years and 33% After**	**End of Year IRA Balance (1 + 2 + 3)**	**Withdrawn Amount Left (3 - 4)**	**Growth on Total Withdrawn (8) at 5.3%**	**Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)**	**Total IRA and Investment Account Balance (5 + 8)**	**Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)**

0	70	$1,000,000	$60,000	($58,824)	($23,294)	$1,001,176	$35,529	$0	$35,529	$1,036,706	$736,353
1	71	$1,001,176	$60,071	($62,574)	($24,779)	$998,674	$37,794	$1,883	$75,207	$1,073,880	$774,278
2	72	$998,674	$59,920	($66,578)	($26,365)	$992,016	$40,213	$3,986	$119,406	$1,111,422	$813,817
3	73	$992,016	$59,521	($70,858)	($28,060)	$980,678	$42,798	$6,329	$168,533	$1,149,211	$855,008
4	74	$980,678	$58,841	($75,437)	($29,873)	$964,082	$45,564	$8,932	$223,029	$1,187,111	$897,887
5	75	$964,082	$57,845	($80,340)	($31,815)	$941,587	$48,525	$11,821	$283,375	$1,224,962	$942,486
6	76	$941,587	$56,495	($85,599)	($33,897)	$912,483	$51,702	$15,019	$350,096	$1,262,579	$988,834
7	77	$912,483	$54,749	($91,248)	($36,134)	$875,984	$55,114	$18,555	$423,765	$1,299,749	$1,036,954
8	78	$875,984	$52,559	($97,332)	($38,543)	$831,212	$58,788	$22,460	$505,013	$1,336,224	$1,086,861
9	79	$831,212	$49,873	($103,901)	($41,145)	$777,183	$62,756	$26,766	$594,535	$1,371,718	$1,138,563
10	80	$777,183	$46,631	($111,026)	($43,966)	$712,788	$67,060	$31,510	$693,105	$1,405,892	$1,192,056
11	81	$712,788	$42,767	($118,798)	($47,044)	$636,757	$71,754	$36,735	$801,593	$1,438,350	$1,247,323
12	82	$636,757	$38,205	($127,351)	($50,431)	$547,611	$76,920	$42,484	$920,998	$1,468,609	$1,304,326
13	83	$547,611	$32,857	($136,903)	($54,213)	$443,565	$82,689	$48,813	$1,052,500	$1,496,065	$1,362,996
14	84	$443,565	$26,614	($147,855)	($58,551)	$322,324	$89,304	$55,783	$1,197,587	$1,519,911	$1,423,214
15	85	$322,324	$19,339	($161,162)	($63,820)	$180,501	$97,342	$63,472	$1,358,401	$1,538,902	$1,484,752
16	86	$180,501	$10,830	($180,501)	($71,479)	$10,830	$109,023	$71,995	$1,539,419	$1,550,249	$1,547,000
17	87	$10,830	$650	$0	$0	$11,480	$0	$81,589	$1,621,008	$1,632,488	$1,629,044
18	88	$11,480	$689	$0	$0	$12,169	$0	$85,913	$1,706,922	$1,719,090	$1,715,440
19	89	$12,169	$730	$0	$0	$12,899	$0	$90,467	$1,797,389	$1,810,287	$1,806,418
20	90	$12,899	$774	$0	$0	$13,673	$0	$95,262	$1,892,650	$1,906,323	$1,902,221
21	91	$13,673	$820	$0	$0	$14,493	$0	$100,310	$1,992,961	$2,007,454	$2,003,106
22	92	$14,493	$870	$0	$0	$15,363	$0	$105,627	$2,098,588	$2,113,950	$2,109,341
23	93	$15,363	$922	$0	$0	$16,284	$0	$111,225	$2,209,813	$2,226,097	$2,221,212
24	94	$16,284	$977	$0	$0	$17,262	$0	$117,120	$2,326,933	$2,344,194	$2,339,016
25	95	$17,262	$1,036	$0	$0	$18,297	$0	$123,327	$2,450,260	$2,468,557	$2,463,068
26	96	$18,297	$1,098	$0	$0	$19,395	$0	$129,864	$2,580,124	$2,599,519	$2,593,700
27	97	$19,395	$1,164	$0	$0	$20,559	$0	$136,747	$2,716,871	$2,737,429	$2,731,262
28	98	$20,559	$1,234	$0	$0	$21,792	$0	$143,994	$2,860,865	$2,882,657	$2,876,119
29	99	$21,792	$1,308	$0	$0	$23,100	$0	$151,626	$3,012,490	$3,035,590	$3,028,660

In the next scenario we assumed that a $1,000,000 IRA would grow at 6% per year for a 50 year old surviving spouse. The surviving spouse has a life expectancy of 35 years, and we further assumed that any amount withdrawn would be saved and grow at an after-tax rate of 5.3% to compare the after income tax values of the IRA, and that investment could be purchased with minimum payments after paying income taxes. As was the case with a 70 year old surviving spouse above, we are assuming that the IRA balance can be discounted by 30% to take into account that it will be 100% taxable when eventually distributed. We also assumed that the separate account funded with after income tax withdrawals would receive a fair market value income tax basis on the death of the surviving spouse, so that there would be no tax on the unrealized depreciation.

Age	Rollover IRA	Conduit Deceased Spouse Under 70.5	Conduit Deceased Spouse Over 70.5	Accumulation IRA
50	$742,000	$742,000	$739,193	$739,193
55	$992,963	$992,963	$968,135	$967,998
60	$1,328,809	$1,328,809	$1,266,007	$1,261,663
65	$1,778,246	$1,778,246	$1,666,245	$1,636,141
70	$2,376,183	$2,374,035	$2,183,771	$2,110,098
75	$3,146,213	$3,124,402	$2,850,585	$2,704,510
80	$4,143,625	$4,082,442	$3,707,690	$3,440,920
85	$5,429,462	$5,304,717	$4,809,023	$4,381,034
90	$7,081,106	$6,869,367	$6,226,670	$5,671,900

More detail from these spreadsheets is as follows:

ROLLOVER IRA

1	2	3	4	5	6	7	8	9	10

Year	Age	Beginning Balance	Growth at 6%	RMD Amount	RMD Tax at 39.6% for First 10 Years and 33% After	End of Year IRA Balance (1 + 2 + 3)	Withdrawn Amount Left (3 - 4)	Growth on Total Withdrawn (8) at 5.3%	Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)	Total IRA and Investment Account Balance (5 + 8)	Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)
0	50	$1,000,000	$60,000	$0	$0	$1,060,000	$0	$0	$0	$1,060,000	$742,000
1	51	$1,060,000	$63,600	$0	$0	$1,123,600	$0	$0	$0	$1,123,600	$786,520
2	52	$1,123,600	$67,416	$0	$0	$1,191,016	$0	$0	$0	$1,191,016	$833,711
3	53	$1,191,016	$71,461	$0	$0	$1,262,477	$0	$0	$0	$1,262,477	$883,734
4	54	$1,262,477	$75,749	$0	$0	$1,338,226	$0	$0	$0	$1,338,226	$936,758
5	55	$1,338,226	$80,294	$0	$0	$1,418,519	$0	$0	$0	$1,418,519	$992,963
6	56	$1,418,519	$85,111	$0	$0	$1,503,630	$0	$0	$0	$1,503,630	$1,052,541
7	57	$1,503,630	$90,218	$0	$0	$1,593,848	$0	$0	$0	$1,593,848	$1,115,694
8	58	$1,593,848	$95,631	$0	$0	$1,689,479	$0	$0	$0	$1,689,479	$1,182,635
9	59	$1,689,479	$101,369	$0	$0	$1,790,848	$0	$0	$0	$1,790,848	$1,253,593
10	60	$1,790,848	$107,451	$0	$0	$1,898,299	$0	$0	$0	$1,898,299	$1,328,809
11	61	$1,898,299	$113,898	$0	$0	$2,012,196	$0	$0	$0	$2,012,196	$1,408,538
12	62	$2,012,196	$120,732	$0	$0	$2,132,928	$0	$0	$0	$2,132,928	$1,493,050
13	63	$2,132,928	$127,976	$0	$0	$2,260,904	$0	$0	$0	$2,260,904	$1,582,633
14	64	$2,260,904	$135,654	$0	$0	$2,396,558	$0	$0	$0	$2,396,558	$1,677,591
15	65	$2,396,558	$143,793	$0	$0	$2,540,352	$0	$0	$0	$2,540,352	$1,778,246
16	66	$2,540,352	$152,421	$0	$0	$2,692,773	$0	$0	$0	$2,692,773	$1,884,941
17	67	$2,692,773	$161,566	$0	$0	$2,854,339	$0	$0	$0	$2,854,339	$1,998,037
18	68	$2,854,339	$171,260	$0	$0	$3,025,600	$0	$0	$0	$3,025,600	$2,117,920
19	69	$3,025,600	$181,536	$0	$0	$3,207,135	$0	$0	$0	$3,207,135	$2,244,995
20	70	$3,207,135	$192,428	($117,049)	($38,626)	$3,282,515	$78,423	$0	$78,423	$3,360,938	$2,376,183
21	71	$3,282,515	$196,951	($123,868)	($40,877)	$3,355,597	$82,992	$4,156	$165,571	$3,521,168	$2,514,489
22	72	$3,355,597	$201,336	($131,078)	($43,256)	$3,425,855	$87,822	$8,775	$262,168	$3,688,024	$2,660,267
23	73	$3,425,855	$205,551	($138,699)	($45,771)	$3,492,708	$92,928	$13,895	$368,991	$3,861,699	$2,813,887
24	74	$3,492,708	$209,562	($146,752)	($48,428)	$3,555,518	$98,324	$19,557	$486,872	$4,042,390	$2,975,735
25	75	$3,555,518	$213,331	($155,263)	($51,237)	$3,613,586	$104,026	$25,804	$616,702	$4,230,289	$3,146,213

26	76	$3,613,586	$216,815	($164,254)	($54,204)	$3,666,147	$110,050	$32,685	$759,438	$4,425,585	$3,325,741
27	77	$3,666,147	$219,969	($172,931)	($57,067)	$3,713,185	$115,864	$40,250	$915,552	$4,628,737	$3,514,781
28	78	$3,713,185	$222,791	($182,916)	($60,362)	$3,753,060	$122,553	$48,524	$1,086,630	$4,839,690	$3,713,772
29	79	$3,753,060	$225,184	($192,465)	($63,513)	$3,785,779	$128,951	$57,591	$1,273,172	$5,058,952	$3,923,218
30	80	$3,785,779	$227,147	($202,448)	($66,808)	$3,810,478	$135,640	$67,478	$1,476,291	$5,286,769	$4,143,625
31	81	$3,810,478	$228,629	($212,876)	($70,249)	$3,826,231	$142,627	$78,243	$1,697,161	$5,523,392	$4,375,523
32	82	$3,826,231	$229,574	($223,756)	($73,840)	$3,832,048	$149,917	$89,950	$1,937,027	$5,769,076	$4,619,461
33	83	$3,832,048	$229,923	($235,095)	($77,581)	$3,826,876	$157,514	$102,662	$2,197,203	$6,024,080	$4,876,017
34	84	$3,826,876	$229,613	($246,895)	($81,475)	$3,809,594	$165,420	$116,452	$2,479,075	$6,288,669	$5,145,790
35	85	$3,809,594	$228,576	($257,405)	($84,944)	$3,780,764	$172,461	$131,391	$2,782,927	$6,563,691	$5,429,462
36	86	$3,780,764	$226,846	($268,139)	($88,486)	$3,739,471	$179,653	$147,495	$3,110,076	$6,849,547	$5,727,705
37	87	$3,739,471	$224,368	($279,065)	($92,091)	$3,684,774	$186,974	$164,834	$3,461,883	$7,146,657	$6,041,225
38	88	$3,684,774	$221,086	($290,140)	($95,746)	$3,615,721	$194,394	$183,480	$3,839,757	$7,455,477	$6,370,761
39	89	$3,615,721	$216,943	($301,310)	($99,432)	$3,531,354	$201,878	$203,507	$4,245,141	$7,776,496	$6,717,089
40	90	$3,531,354	$211,881	($309,768)	($102,223)	$3,433,467	$207,544	$224,992	$4,677,678	$8,111,146	$7,081,106
41	91	$3,433,467	$206,008	($317,914)	($104,912)	$3,321,562	$213,002	$247,917	$5,138,598	$8,460,159	$7,463,691
42	92	$3,321,562	$199,294	($325,643)	($107,462)	$3,195,212	$218,181	$272,346	$5,629,124	$8,824,336	$7,865,773
43	93	$3,195,212	$191,713	($332,835)	($109,835)	$3,054,090	$222,999	$298,344	$6,150,467	$9,204,557	$8,288,330
44	94	$3,054,090	$183,245	($335,614)	($110,753)	$2,901,721	$224,862	$325,975	$6,701,303	$9,603,025	$8,732,508
45	95	$2,901,721	$174,103	($337,409)	($111,345)	$2,738,415	$226,064	$355,169	$7,282,537	$10,020,952	$9,199,427
46	96	$2,738,415	$164,305	($338,076)	($111,565)	$2,564,644	$226,511	$385,974	$7,895,022	$10,459,666	$9,690,273
47	97	$2,564,644	$153,879	($337,453)	($111,360)	$2,381,070	$226,094	$418,436	$8,539,552	$10,920,622	$10,206,301
48	98	$2,381,070	$142,864	($335,362)	($110,669)	$2,188,572	$224,692	$452,596	$9,216,841	$11,405,413	$10,748,841
49	99	$2,188,572	$131,314	($326,653)	($107,795)	$1,993,234	$218,857	$488,493	$9,924,190	$11,917,424	$11,319,454
50	100	$1,993,234	$119,594	($316,386)	($104,407)	$1,796,441	$211,979	$525,982	$10,662,151	$12,458,593	$11,919,660

CONDUIT TRUST DECEASED SPOUSE UNDER 70.5

1	2	3	4	5	6	7	8	9	10

Year	Age	Beginning Balance	Growth at 6%	RMD Amount	RMD Tax at 39.6% for First 10 Years and 33% After	End of Year IRA Balance (1 + 2 + 3)	Withdrawn Amount Left (3 - 4)	Growth on Total Withdrawn (8) at 5.3%	Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)	Total IRA and Investment Account Balance (5 + 8)	Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)
0	50	$1,000,000	$60,000	$0	$0	$1,060,000	$0	$0	$0	$1,060,000	$742,000
1	51	$1,060,000	$63,600	$0	$0	$1,123,600	$0	$0	$0	$1,123,600	$786,520
2	52	$1,123,600	$67,416	$0	$0	$1,191,016	$0	$0	$0	$1,191,016	$833,711
3	53	$1,191,016	$71,461	$0	$0	$1,262,477	$0	$0	$0	$1,262,477	$883,734
4	54	$1,262,477	$75,749	$0	$0	$1,338,226	$0	$0	$0	$1,338,226	$936,758
5	55	$1,338,226	$80,294	$0	$0	$1,418,519	$0	$0	$0	$1,418,519	$992,963
6	56	$1,418,519	$85,111	$0	$0	$1,503,630	$0	$0	$0	$1,503,630	$1,052,541
7	57	$1,503,630	$90,218	$0	$0	$1,593,848	$0	$0	$0	$1,593,848	$1,115,694
8	58	$1,593,848	$95,631	$0	$0	$1,689,479	$0	$0	$0	$1,689,479	$1,182,635
9	59	$1,689,479	$101,369	$0	$0	$1,790,848	$0	$0	$0	$1,790,848	$1,253,593
10	60	$1,790,848	$107,451	$0	$0	$1,898,299	$0	$0	$0	$1,898,299	$1,328,809
11	61	$1,898,299	$113,898	$0	$0	$2,012,196	$0	$0	$0	$2,012,196	$1,408,538
12	62	$2,012,196	$120,732	$0	$0	$2,132,928	$0	$0	$0	$2,132,928	$1,493,050
13	63	$2,132,928	$127,976	$0	$0	$2,260,904	$0	$0	$0	$2,260,904	$1,582,633
14	64	$2,260,904	$135,654	$0	$0	$2,396,558	$0	$0	$0	$2,396,558	$1,677,591
15	65	$2,396,558	$143,793	$0	$0	$2,540,352	$0	$0	$0	$2,540,352	$1,778,246
16	66	$2,540,352	$152,421	$0	$0	$2,692,773	$0	$0	$0	$2,692,773	$1,884,941
17	67	$2,692,773	$161,566	$0	$0	$2,854,339	$0	$0	$0	$2,854,339	$1,998,037
18	68	$2,854,339	$171,260	$0	$0	$3,025,600	$0	$0	$0	$3,025,600	$2,117,920
19	69	$3,025,600	$181,536	$0	$0	$3,207,135	$0	$0	$0	$3,207,135	$2,244,995
20	70	$3,207,135	$192,428	($188,655)	($62,256)	$3,210,909	$126,399	$0	$126,399	$3,337,307	$2,374,035
21	71	$3,210,909	$192,655	($196,988)	($65,006)	$3,206,575	$131,982	$6,699	$265,080	$3,471,655	$2,509,683
22	72	$3,206,575	$192,394	($206,876)	($68,269)	$3,192,094	$138,607	$14,049	$417,736	$3,609,830	$2,652,202
23	73	$3,192,094	$191,526	($215,682)	($71,175)	$3,167,937	$144,507	$22,140	$584,383	$3,752,320	$2,801,939
24	74	$3,167,937	$190,076	($224,676)	($74,143)	$3,133,337	$150,533	$30,972	$765,889	$3,899,226	$2,959,224
25	75	$3,133,337	$188,000	($233,831)	($77,164)	$3,087,506	$156,667	$40,592	$963,148	$4,050,654	$3,124,402

26	76	$3,087,506	$185,250	($243,111)	($80,227)	$3,029,646	$162,884	$51,047	$1,177,079	$4,206,724	$3,297,831
27	77	$3,029,646	$181,779	($250,384)	($82,627)	$2,961,041	$167,757	$62,385	$1,407,221	$4,368,261	$3,479,949
28	78	$2,961,041	$177,662	($259,740)	($85,714)	$2,878,963	$174,026	$74,583	$1,655,830	$4,534,792	$3,671,104
29	79	$2,878,963	$172,738	($266,571)	($87,968)	$2,785,130	$178,602	$87,759	$1,922,191	$4,707,321	$3,871,782
30	80	$2,785,130	$167,108	($273,052)	($90,107)	$2,679,186	$182,945	$101,876	$2,207,012	$4,886,198	$4,082,442
31	81	$2,679,186	$160,751	($276,205)	($91,148)	$2,563,732	$185,057	$116,972	$2,509,041	$5,072,773	$4,303,653
32	82	$2,563,732	$153,824	($281,729)	($92,971)	$2,435,827	$188,758	$132,979	$2,830,778	$5,266,605	$4,535,857
33	83	$2,435,827	$146,150	($283,236)	($93,468)	$2,298,741	$189,768	$150,031	$3,170,577	$5,469,318	$4,779,696
34	84	$2,298,741	$137,924	($283,795)	($93,652)	$2,152,870	$190,143	$168,041	$3,528,761	$5,681,631	$5,035,770
35	85	$2,152,870	$129,172	($283,272)	($93,480)	$1,998,770	$189,793	$187,024	$3,905,578	$5,904,348	$5,304,717
36	86	$1,998,770	$119,926	($281,517)	($92,901)	$1,837,179	$188,616	$206,996	$4,301,189	$6,138,369	$5,587,215
37	87	$1,837,179	$110,231	($274,206)	($90,488)	$1,673,204	$183,718	$227,963	$4,712,870	$6,386,075	$5,884,113
38	88	$1,673,204	$100,392	($265,588)	($87,644)	$1,508,009	$177,944	$249,782	$5,140,597	$6,648,605	$6,196,203
39	89	$1,508,009	$90,481	($255,595)	($84,346)	$1,342,894	$171,248	$272,452	$5,584,297	$6,927,191	$6,524,323
40	90	$1,342,894	$80,574	($244,163)	($80,574)	$1,179,305	$163,589	$295,968	$6,043,853	$7,223,159	$6,869,367
41	91	$1,179,305	$70,758	($226,790)	($74,841)	$1,023,274	$151,949	$320,324	$6,516,126	$7,539,401	$7,232,418
42	92	$1,023,274	$61,396	($208,831)	($68,914)	$875,839	$139,917	$345,355	$7,001,398	$7,877,238	$7,614,486
43	93	$875,839	$52,550	($190,400)	($62,832)	$737,990	$127,568	$371,074	$7,500,040	$8,238,030	$8,016,633
44	94	$737,990	$44,279	($171,626)	($56,636)	$610,644	$114,989	$397,502	$8,012,532	$8,623,175	$8,439,982
45	95	$610,644	$36,639	($148,937)	($49,149)	$498,345	$99,788	$424,664	$8,536,984	$9,035,329	$8,885,825
46	96	$498,345	$29,901	($131,143)	($43,277)	$397,102	$87,866	$452,460	$9,077,310	$9,474,412	$9,355,281
47	97	$397,102	$23,826	($110,306)	($36,401)	$310,622	$73,905	$481,097	$9,632,313	$9,942,935	$9,849,748
48	98	$310,622	$18,637	($91,359)	($30,149)	$237,900	$61,211	$510,513	$10,204,036	$10,441,936	$10,370,566
49	99	$237,900	$14,274	($76,742)	($25,325)	$175,432	$51,417	$540,814	$10,796,267	$10,971,699	$10,919,069
50	100	$175,432	$10,526	($60,494)	($19,963)	$125,464	$40,531	$572,202	$11,409,000	$11,534,464	$11,496,825

CONDUIT TRUST DECEASED SPOUSE OVER 70.5

1	2	3	4	5	6	7	8	9	10

Year	Age	Beginning Balance	Growth at 6%	RMD Amount	RMD Tax at 39.6% for First 10 Years and 33% After	End of Year IRA Balance (1 + 2 + 3)	Withdrawn Amount Left (3 - 4)	Growth on Total Withdrawn (8) at 5.3%	Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)	Total IRA and Investment Account Balance (5 + 8)	Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)
0	50	$1,000,000	$60,000	($29,240)	($11,579)	$1,030,760	$17,661	$0	$17,661	$1,048,421	$739,193
1	51	$1,030,760	$61,846	($30,954)	($12,258)	$1,061,652	$18,696	$936	$37,293	$1,098,945	$780,449
2	52	$1,061,652	$63,699	($32,868)	($13,016)	$1,092,483	$19,853	$1,977	$59,122	$1,151,605	$823,860
3	53	$1,092,483	$65,549	($34,792)	($13,778)	$1,123,239	$21,015	$3,133	$83,270	$1,206,509	$869,538
4	54	$1,123,239	$67,394	($36,828)	($14,584)	$1,153,806	$22,244	$4,413	$109,927	$1,263,733	$917,592
5	55	$1,153,806	$69,228	($38,980)	($15,436)	$1,184,055	$23,544	$5,826	$139,297	$1,323,352	$968,135
6	56	$1,184,055	$71,043	($41,256)	($16,337)	$1,213,842	$24,919	$7,383	$171,599	$1,385,440	$1,021,288
7	57	$1,213,842	$72,830	($43,507)	($17,229)	$1,243,165	$26,278	$9,095	$206,972	$1,450,137	$1,077,187
8	58	$1,243,165	$74,590	($46,043)	($18,233)	$1,271,712	$27,810	$10,969	$245,751	$1,517,463	$1,135,950
9	59	$1,271,712	$76,303	($48,725)	($19,295)	$1,299,290	$29,430	$13,025	$288,206	$1,587,496	$1,197,709
10	60	$1,299,290	$77,957	($51,559)	($17,015)	$1,325,688	$34,545	$15,275	$338,025	$1,663,714	$1,266,007
11	61	$1,325,688	$79,541	($54,331)	($17,929)	$1,350,898	$36,402	$17,915	$392,343	$1,743,241	$1,337,971
12	62	$1,350,898	$81,054	($57,485)	($18,970)	$1,374,467	$38,515	$20,794	$451,652	$1,826,119	$1,413,779
13	63	$1,374,467	$82,468	($60,549)	($19,981)	$1,396,386	$40,568	$23,938	$516,157	$1,912,543	$1,493,627
14	64	$1,396,386	$83,783	($64,054)	($21,138)	$1,416,115	$42,916	$27,356	$586,430	$2,002,545	$1,577,710
15	65	$1,416,115	$84,967	($67,434)	($22,253)	$1,433,647	$45,181	$31,081	$662,692	$2,096,339	$1,666,245
16	66	$1,433,647	$86,019	($70,973)	($23,421)	$1,448,694	$47,552	$35,123	$745,366	$2,194,060	$1,759,452
17	67	$1,448,694	$86,922	($74,675)	($24,643)	$1,460,940	$50,032	$39,504	$834,903	$2,295,843	$1,857,561
18	68	$1,460,940	$87,656	($78,545)	($25,920)	$1,470,052	$52,625	$44,250	$931,778	$2,401,829	$1,960,814
19	69	$1,470,052	$88,203	($82,587)	($27,254)	$1,475,667	$55,333	$49,384	$1,036,495	$2,512,163	$2,069,463
20	70	$1,475,667	$88,540	($86,804)	($28,645)	$1,477,404	$58,159	$54,934	$1,149,588	$2,626,992	$2,183,771
21	71	$1,477,404	$88,644	($90,638)	($29,911)	$1,475,409	$60,728	$60,928	$1,271,244	$2,746,654	$2,304,031
22	72	$1,475,409	$88,525	($95,188)	($31,412)	$1,468,746	$63,776	$67,376	$1,402,396	$2,871,142	$2,430,518
23	73	$1,468,746	$88,125	($99,240)	($32,749)	$1,457,632	$66,491	$74,327	$1,543,213	$3,000,845	$2,563,555
24	74	$1,457,632	$87,458	($103,378)	($34,115)	$1,441,711	$69,263	$81,790	$1,694,267	$3,135,978	$2,703,465
25	75	$1,441,711	$86,503	($107,590)	($35,505)	$1,420,624	$72,086	$89,796	$1,856,149	$3,276,772	$2,850,585

26	76	$1,420,624	$85,237	($111,860)	($36,914)	$1,394,001	$74,946	$98,376	$2,029,471	$3,423,472	$3,005,271
27	77	$1,394,001	$83,640	($115,207)	($38,018)	$1,362,434	$77,188	$107,562	$2,214,221	$3,576,655	$3,167,925
28	78	$1,362,434	$81,746	($119,512)	($39,439)	$1,324,669	$80,073	$117,354	$2,411,648	$3,736,316	$3,338,916
29	79	$1,324,669	$79,480	($122,654)	($40,476)	$1,281,494	$82,179	$127,817	$2,621,644	$3,903,138	$3,518,690
30	80	$1,281,494	$76,890	($125,637)	($41,460)	$1,232,747	$84,177	$138,947	$2,844,767	$4,077,514	$3,707,690
31	81	$1,232,747	$73,965	($127,087)	($41,939)	$1,179,625	$85,149	$150,773	$3,080,689	$4,260,313	$3,906,426
32	82	$1,179,625	$70,777	($129,629)	($42,778)	$1,120,773	$86,851	$163,276	$3,330,817	$4,451,590	$4,115,358
33	83	$1,120,773	$67,246	($130,322)	($43,006)	$1,057,697	$87,316	$176,533	$3,594,666	$4,652,363	$4,335,054
34	84	$1,057,697	$63,462	($130,580)	($43,091)	$990,579	$87,489	$190,517	$3,872,672	$4,863,251	$4,566,077
35	85	$990,579	$59,435	($130,339)	($43,012)	$919,674	$87,327	$205,252	$4,165,251	$5,084,925	$4,809,023
36	86	$919,674	$55,180	($129,532)	($42,745)	$845,323	$86,786	$220,758	$4,472,795	$5,318,118	$5,064,521
37	87	$845,323	$50,719	($126,168)	($41,635)	$769,875	$84,532	$237,058	$4,794,385	$5,564,260	$5,333,298
38	88	$769,875	$46,192	($122,202)	($40,327)	$693,865	$81,876	$254,102	$5,130,363	$5,824,229	$5,616,069
39	89	$693,865	$41,632	($117,604)	($38,809)	$617,893	$78,795	$271,909	$5,481,068	$6,098,960	$5,913,592
40	90	$617,893	$37,074	($112,344)	($37,074)	$542,622	$75,271	$290,497	$5,846,835	$6,389,457	$6,226,670
41	91	$542,622	$32,557	($104,350)	($34,436)	$470,829	$69,915	$309,882	$6,226,632	$6,697,461	$6,556,212
42	92	$470,829	$28,250	($96,088)	($31,709)	$402,991	$64,379	$330,011	$6,621,022	$7,024,013	$6,903,116
43	93	$402,991	$24,179	($87,607)	($28,910)	$339,564	$58,697	$350,914	$7,030,633	$7,370,197	$7,268,327
44	94	$339,564	$20,374	($78,968)	($26,060)	$280,969	$52,909	$372,624	$7,456,165	$7,737,134	$7,652,844
45	95	$280,969	$16,858	($68,529)	($22,615)	$229,298	$45,915	$395,177	$7,897,256	$8,126,555	$8,057,765
46	96	$229,298	$13,758	($60,342)	($19,913)	$182,715	$40,429	$418,555	$8,356,240	$8,538,954	$8,484,140
47	97	$182,715	$10,963	($50,754)	($16,749)	$142,923	$34,005	$442,881	$8,833,126	$8,976,049	$8,933,172
48	98	$142,923	$8,575	($42,036)	($13,872)	$109,463	$28,164	$468,156	$9,329,446	$9,438,908	$9,406,069
49	99	$109,463	$6,568	($35,311)	($11,652)	$80,720	$23,658	$494,461	$9,847,564	$9,928,284	$9,904,068
50	100	$80,720	$4,843	($27,834)	($9,185)	$57,729	$18,649	$521,921	$10,388,134	$10,445,863	$10,428,544

ACCUMULATION TRUST

1	2	3	4	5	6	7	8	9	10

Year	Age	Beginning Balance	Growth at 6%	RMD Amount	RMD Tax at 39.6% for First 10 Years and 33% After	End of Year IRA Balance (1 + 2 + 3)	Withdrawn Amount Left (3 - 4)	Growth on Total Withdrawn (8) at 5.3%	Cumulative Withdrawals Reinvested (6 + 7 + Prev. Year's 8)	Total IRA and Investment Account Balance (5 + 8)	Total Value = 70% of End IRA (5) + 100% of Total Withdrawn Amount (8)
0	50	$1,000,000	$60,000	($29,240)	($11,579)	$1,030,760	$17,661	$0	$17,661	$1,048,421	$739,193
1	51	$1,030,760	$61,846	($31,047)	($12,295)	$1,061,559	$18,752	$936	$37,349	$1,098,908	$780,440
2	52	$1,061,559	$63,694	($32,968)	($13,055)	$1,092,285	$19,912	$1,980	$59,241	$1,151,526	$823,841
3	53	$1,092,285	$65,537	($35,009)	($13,864)	$1,122,813	$21,146	$3,140	$83,527	$1,206,339	$869,495
4	54	$1,122,813	$67,369	($37,179)	($14,723)	$1,153,002	$22,456	$4,427	$110,410	$1,263,412	$917,511
5	55	$1,153,002	$69,180	($39,486)	($15,637)	$1,182,696	$23,850	$5,852	$140,111	$1,322,807	$967,998
6	56	$1,182,696	$70,962	($41,940)	($16,608)	$1,211,718	$25,332	$7,426	$172,869	$1,384,587	$1,021,071
7	57	$1,211,718	$72,703	($44,548)	($17,641)	$1,239,873	$26,907	$9,162	$208,938	$1,448,811	$1,076,849
8	58	$1,239,873	$74,392	($47,323)	($18,740)	$1,266,942	$28,583	$11,074	$248,595	$1,515,537	$1,135,454
9	59	$1,266,942	$76,017	($50,275)	($19,909)	$1,292,683	$30,366	$13,176	$292,137	$1,584,820	$1,197,015
10	60	$1,292,683	$77,561	($53,417)	($21,153)	$1,316,827	$32,264	$15,483	$339,884	$1,656,711	$1,261,663
11	61	$1,316,827	$79,010	($56,760)	($22,477)	$1,339,077	$34,283	$18,014	$392,180	$1,731,257	$1,329,534
12	62	$1,339,077	$80,345	($60,319)	($23,886)	$1,359,103	$36,433	$20,786	$449,399	$1,808,501	$1,400,770
13	63	$1,359,103	$81,546	($64,109)	($25,387)	$1,376,540	$38,722	$23,818	$511,938	$1,888,479	$1,475,517
14	64	$1,376,540	$82,592	($68,146)	($26,986)	$1,390,987	$41,160	$27,133	$580,231	$1,971,218	$1,553,922
15	65	$1,390,987	$83,459	($72,447)	($28,689)	$1,401,999	$43,758	$30,752	$654,741	$2,056,740	$1,636,141
16	66	$1,401,999	$84,120	($77,033)	($30,505)	$1,409,086	$46,528	$34,701	$735,970	$2,145,057	$1,722,331
17	67	$1,409,086	$84,545	($81,924)	($32,442)	$1,411,708	$49,482	$39,006	$824,459	$2,236,167	$1,812,654
18	68	$1,411,708	$84,702	($87,142)	($34,508)	$1,409,268	$52,634	$43,696	$920,789	$2,330,057	$1,907,277
19	69	$1,409,268	$84,556	($92,715)	($36,715)	$1,401,109	$56,000	$48,802	$1,025,591	$2,426,700	$2,006,367
20	70	$1,401,109	$84,067	($98,670)	($39,073)	$1,386,506	$59,596	$54,356	$1,139,544	$2,526,049	$2,110,098
21	71	$1,386,506	$83,190	($105,038)	($41,595)	$1,364,658	$63,443	$60,396	$1,263,383	$2,628,040	$2,218,643
22	72	$1,364,658	$81,879	($111,857)	($44,295)	$1,334,680	$67,562	$66,959	$1,397,904	$2,732,584	$2,332,180
23	73	$1,334,680	$80,081	($119,168)	($47,190)	$1,295,593	$71,977	$74,089	$1,543,970	$2,839,563	$2,450,885
24	74	$1,295,593	$77,736	($127,019)	($50,299)	$1,246,310	$76,719	$81,830	$1,702,520	$2,948,829	$2,574,936
25	75	$1,246,310	$74,779	($135,468)	($53,646)	$1,185,620	$81,823	$90,234	$1,874,576	$3,060,196	$2,704,510

26	76	$1,185,620	$71,137	($144,588)	($57,257)	$1,112,169	$87,331	$99,353	$2,061,260	$3,173,429	$2,839,778
27	77	$1,112,169	$66,730	($154,468)	($61,169)	$1,024,431	$93,299	$109,247	$2,263,805	$3,288,236	$2,980,907
28	78	$1,024,431	$61,466	($165,231)	($65,431)	$920,666	$99,799	$119,982	$2,483,586	$3,404,253	$3,128,053
29	79	$920,666	$55,240	($177,051)	($70,112)	$798,855	$106,939	$131,630	$2,722,155	$3,521,010	$3,281,354
30	80	$798,855	$47,931	($190,204)	($75,321)	$656,583	$114,883	$144,274	$2,981,312	$3,637,895	$3,440,920
31	81	$656,583	$39,395	($205,182)	($81,252)	$490,796	$123,930	$158,010	$3,263,252	$3,754,048	$3,606,809
32	82	$490,796	$29,448	($223,089)	($88,343)	$297,154	$134,746	$172,952	$3,570,950	$3,868,105	$3,778,958
33	83	$297,154	$17,829	($247,629)	($98,061)	$67,355	$149,568	$189,260	$3,909,778	$3,977,133	$3,956,927
34	84	$67,355	$4,041	($67,355)	($26,673)	$4,041	$40,682	$207,218	$4,157,679	$4,161,720	$4,160,508
35	85	$4,041	$242	$0	$0	$4,284	$0	$220,357	$4,378,036	$4,382,320	$4,381,034
36	86	$4,284	$257	$0	$0	$4,541	$0	$232,036	$4,610,072	$4,614,613	$4,613,250
37	87	$4,541	$272	$0	$0	$4,813	$0	$244,334	$4,854,406	$4,859,219	$4,857,775
38	88	$4,813	$289	$0	$0	$5,102	$0	$257,283	$5,111,689	$5,116,791	$5,115,260
39	89	$5,102	$306	$0	$0	$5,408	$0	$270,920	$5,382,609	$5,388,017	$5,386,394
40	90	$5,408	$324	$0	$0	$5,733	$0	$285,278	$5,667,887	$5,673,619	$5,671,900
41	91	$5,733	$344	$0	$0	$6,077	$0	$300,398	$5,968,285	$5,974,361	$5,972,538
42	92	$6,077	$365	$0	$0	$6,441	$0	$316,319	$6,284,604	$6,291,045	$6,289,113
43	93	$6,441	$386	$0	$0	$6,828	$0	$333,084	$6,617,688	$6,624,516	$6,622,467
44	94	$6,828	$410	$0	$0	$7,237	$0	$350,737	$6,968,425	$6,975,663	$6,973,492
45	95	$7,237	$434	$0	$0	$7,672	$0	$369,327	$7,337,752	$7,345,424	$7,343,122
46	96	$7,672	$460	$0	$0	$8,132	$0	$388,901	$7,726,653	$7,734,785	$7,732,345
47	97	$8,132	$488	$0	$0	$8,620	$0	$409,513	$8,136,165	$8,144,785	$8,142,199
48	98	$8,620	$517	$0	$0	$9,137	$0	$431,217	$8,567,382	$8,576,519	$8,573,778
49	99	$9,137	$548	$0	$0	$9,685	$0	$454,071	$9,021,453	$9,031,139	$9,028,233
50	100	$9,685	$581	$0	$0	$10,266	$0	$478,137	$9,499,590	$9,509,857	$9,506,777

Under both scenarios, but especially so for the 70 year old couple, the values of any amount remaining at age 75 and at age 85 are not as significantly different as one might have thought. To reiterate, we assumed that the after-tax growth rate of such investments outside of the IRA would be 5.3% (thus assuming a seven-tenths of one percent per year tax on qualified income and capital gains transactions in

the portfolio), and that the surviving spouse will die owning the remaining investments, which will then receive a stepped-up basis. We further assumed that amounts remaining in an IRA that are taxable upon withdrawal will be considered to be worth 70% of the IRA balance, because the children and grandchildren are in lower tax brackets or have losses that can offset gains received on distributions.

As many readers know, a Conduit Trust must require that the minimum distribution amount be paid to the surviving spouse, whether he or she needs it or not, but the payout amount is lower each year than under the accumulation distribution method because the surviving spouse's life expectancy can be recalculated, as shown in Column E of our spreadsheets.

Under an Accumulation Trust, the minimum distributions from the IRA can be reinvested and do not have to be paid out to the surviving spouse. These minimum distributions will be taxed at the highest income tax rate on income exceeding $12,400 for 2016 if retained in the Trust, or may be taxed at the surviving spouse's rate or at the rates of children who may be in lower brackets to the extent paid out to the surviving spouse by the 65th day following the calendar year.

It was surprising to the authors that the faster payout required under the Accumulation Trust as opposed to the Conduit Trust does not result in significant additional taxes, relatively speaking, because of the lower tax rates that will apply to qualified dividends, capital gains on sales, and municipal bonds, and based upon the assumption of a stepped-up basis on the death of the surviving spouse.

Another factor to consider is that affluent families will often spend hundreds of thousands of dollars on private nursing and/or assisted living expenses in the later years of a surviving spouse's life, which thus enables IRA distribution and other income to be paid out at a zero or other lower than 39.6% tax bracket, depending on the amount of other income and deductions that surviving spouse has.

Conclusion

When planning it is important to remember that portability is not the only tool in the arsenal, and solely relying on it may be a costly mistake. It never hurts to take time to simply run the numbers and take steps to improve results and decrease the risk of a less than optimum tax and other result for clients.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Alan Gassman
Ed Morrow
Seaver Brown
Brandon Ketron

CITE AS:

LISI Estate Planning Newsletter #2387 (February 1, 2016) at http://www.leimbergservices.com

CITATIONS:

[1] The applicable exclusion amount for decedents dying in 2016 is $5,450,000, but for practical purposes we must consider previous lifetime non-charitable gifting that has exceeded the $14,000 per person annual exclusion. The applicable exclusion amount is scheduled to rise with the Consumer Price Index each year. See Rev. Proc. 2015-53, §2.33 at https://www.irs.gov/pub/irs-drop/rp-15-53.pdf.

[2] See Instructions for Form 706, Page 4, Supplemental Documents at https://www.irs.gov/pub/irs-pdf/i706.pdf for a list of other supplemental documents that may be required, in addition to the death certificate and will, if any.

[3] A portability election occurs automatically if the Form 706 is timely and properly filed, unless the preparer opts out by explicitly checking the box in Part 6 Section A on page 4 of the return

[4] 80 FR 34279 at https://www.federalregister.gov/articles/2015/06/16/2015-14663/portability-of-a-deceased-spousal-unused-exclusion-amount.

[5] Bob Keebler, *IRS Grants 9100 Relief for Late Portability Returns*, **LISI** 60-Second Planner (December 3, 2015).

[6] The effective date of IRC § 2010(c), which provides for portability of a deceased spouse's unused exemption amount, is January 1, 2011.

[7] Treas. Reg. § 301.9100-3(a).

[8] Treas. Reg. § 301.9100-3(b)(1) provides for relief if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the IRS; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the IRS; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

[9] Treas. Reg. § 301.9100-3(b)(3) does not provide for relief if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed) and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences but chose not to file the election; or (iii) uses hindsight in requesting relief.

[10] Under IRC 6018(a)(1), when the gross estate of the decedent is more than the exemption amount of $5,450,000 for those that die in 2016, plus previous taxable gifts, there is an obligation to file the estate tax return, even if the estate will not owe any taxes after all applicable deductions and tax credits. In those instances where an estate tax return

must be filed, and the surviving spouse is entitled to take advantage of the Deceased Spouse's Unused Exemption ("DSUE") amount, the executor of the estate must facilitate the DSUE election on a timely filed Form 706 by filing the return and not electing out of Portability. A Form 706 is timely filed if sent by certified mail or a private delivery service (FedEx or UPS) within nine months of the decedent's date of death. However, an automatic six month extension of time is granted for all estates if they file a Form 4768 before the expiration of the nine month period. In the event such nine month period has expired, the taxpayer may still be granted an extension of time if good cause is shown. Instructions for Form 4768 Part II provides that: "If you are applying for an extension for good cause you must: . . . Attach a written statement explaining in detail why: 1. You were unable to request an automatic extension, 2. It is impossible or impractical to file Form 706 by the due date, and 3. You should be granted an extension at this time." Thus, a surviving spouse has until the ninth month (or the fifteenth month with a proper extension) after the death of their spouse to elect for portability of the DSUE amount, if the spouse's estate is required to file an estate tax return, with no ability to request an extension or Section 9100 relief, notwithstanding the reason that a return is not timely filed.

As noted above, the allowance "election" is automatic if the return is filed, as long as the box to elect out of portability is checked. If there is no estate tax to be paid, then only the assets that pass to non-marital deduction and non-charitable deduction beneficiaries have to be carefully valued on the return, and the IRS has until its ability to audit the estate tax return of the surviving spouse to audit the amount of the allowance. The IRS will have until the audit period runs on the surviving spouse's estate tax return, or the statute will never close if the surviving spouse's estate does not file an estate tax return.

On the other hand, where the gross estate appears to be below the filing threshold, there remains much confusion among planners over the filing requirements. In these instances, as we mentioned above, there is no requirement for the estate file a Form 706, however, this means that the estate cannot elect for portability of the DSUE amount. IRC Section 2010(c)(5)(A) states that . . . "No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return." Thus begs the question -- what if the estate later determines that they should have made a portability election, but the nine month period to file (or fifteen months if an extension was filed within nine months) has lapsed? Fortunately, late filing relief may still be available under Revenue Procedure 2014-18 and Treasury Regulation 301.9100-3 ("9100 Relief").

For those decedents who died in 2011, 2012, or 2013 with a surviving spouse, Revenue Procedure 2014-18 provided a simplified method to extend the time in which they could have made their portability election without going through the expense and uncertainty of requesting 9100 Relief. Unfortunately, however, the deadline to take advantage of this simplified method under Revenue Procedure 2014-18 was December 31, 2014, and this will not be extended.

Executors of decedents who died after December 31, 2014 still have relief options available to them, unless an estate tax return was required to be filed due to the size of the gross estate, and no timely return or timely extension followed by a return was filed. Revenue Procedure 2014-18 provides that those estates eligible for relief ". . . may request an extension of time to make the portability election under § 2010(c)(5)(A) by requesting a letter ruling under the provisions of § 301.9100-3. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2014-1, 2014-1 I.R.B.1 (or its successors)."

In two recent Private Letter Rulings 2015-48004 (Nov. 27, 2015) and 2015-49022 (Dec. 4, 2015), the IRS granted 9100-3 Relief to two estates that were not required to file a Form 706 because the value of the decedent's gross estate was less than the applicable exclusion amount. Here, the surviving spouse of each estate was unable to take advantage of their deceased spouse's DSUE amount, because the time to file a Form 706 or Form 4768 had lapsed. Thus, the only method available to obtain relief was under § 301.9100-3, which will be granted if the taxpayer provides evidence that (1) they acted reasonably and in good faith, and that (2) granting relief will not prejudice the interests of the government.

However, please note the total DSUE amount available to a surviving spouse is

reduced by any prior taxable gifts, gross before deductions. Further, these prior taxable gifts will reduce the Form 706 filing threshold for the estate. Thus, if the deceased spouse gifted an additional $3,000,000 beyond the applicable exclusion amount, the total DSUE amount available to the surviving spouse, as well as the applicable gross estate filing threshold is $2,450,000 instead of $5,450,000.

[12] Treas. Reg. § 20.2053-7.

[13] *Estate Planning At The Movies(R): Due to Technical Difficulties, Your New Statute on Consistency with Basis Reporting Cannot Be Viewed in Its Entirety*, **LISI** Estate Planning Newsletter #2346 (September 23, 2015).

[14] Gassman, Crotty, Buschart & Moody *On the $28,000,000 Mistake: Underestimating the Value of a Bypass Trust and Overestimating the Value of Spousal Estate Tax Exclusion Portability,* **LISI** Estate Planning Newsletter #2061.

[15] This value represents the Compound Annual Growth Rate of the S&P 500 from 1982 to 2011.

[16] See the *Optimal Basis Increase Trust* white paper, Part IV *Busting Spousal Disclaimer Myths – Using Optimal Basis Increase Trusts w/ Disclaimer Based Planning.*

[17] See the *Optimal Basis Increase Trust* white paper cited above.

[18] *Clayton v. Commissioner*, 976 F.2d 1486 (5th Cir 1992) – decedent's Will directed that if a QTIP election was not made for a trust that the assets be moved to a Bypass Trust with *different dispositive provisions*. See also Treas. Reg. §20.2056(b)-7(d)(3) "a qualifying income interest for life that is contingent upon the executor's election under Section 2056(b)(7)(B)(v) [QTIP] will not fail to be a qualifying income interest for life because of such contingency or because the portion of the property for which the election is not made passes to or for the benefit of persons other than the surviving spouse."

[19] See, Gassman, *"Explaining the Surviving Spouse's Disclaimer, Portability, and Clayton Q-TIP Choices in 577 Words or Less."*

[20] 2001-1 CB 1335 (6/11/2001).

[21] See IRC § 2044(a).

[22] See IRC § 2519.

[23] Bramwell, Dillon & Mullen, *Relax, Rev. Proc. 2001-38 Cannot Be Used Against Taxpayers, Or Why QTIP Planning is Safer than Some Might Think*, **LISI** Estate Planning Newsletter #2100 (May 2013).

[24] See, e.g., Rule v. United States, 105 Ct. Cl. 176, 191, 63 F. Supp. 351, 359-360 (1945); Estate of Saunders v. Comm'r, 14 TC 534, 541 (1950); Tuck v. United States, 282 F2d 405, 409–410 (9th Cir. 1960); English v. United States, 270 F2d 876, 879-880 (7th Cir. 1959). The Tax Court, however, adopted the IRS position that either the decedent's estate or the IRS could prove the contribution by the surviving co-owner. Madden v. Comm'r, 52 TC 845 (1969); Estate of Fleming v. Comm'r, TC Memo. 1974-377.

[25] See, Gassman, Ellwanger & Hohnadell, *It's Just a JEST, the Joint Exempt Step-Up Trust*, **LISI** Estate Planning Newsletter #2086.

[26] See Tennessee Community Property Trust Act of 2010.

[27] See, Jonathan G. Blattmachr, Howard M. Zaritsky & Mark L. Ascher, *Tax Planning with Consensual Community Property: Alaska's New Community Property Law,* 33 Real Prop., Prob. & Tr. J. 614 (1999) (arguing that an election under the Alaska law will be effective for tax basis purposes).

[28] See, Gassman, Ellwanger & Hohnadell, *It's Just a JEST, the Joint Exempt Step-Up Trust*, **LISI** Estate Planning Newsletter #2086.

[29] Gassman & Crotty, *The $800,000 Mistake*, **LISI** Estate Planning Newsletter #2180 (January 9, 2014); *Jest Offers Serious Estate Planning Plus for Spouses – Part I*, Estate Planning Magazine, October 2013; *Jest Offers Serious Estate Planning for Spouse – Part II,* Estate Planning Magazine, November 2013.