THE THURSDAY REPORT +/- 24 Hours

Issue #281 - Friday, January 24, 2019

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Terence Jones passed this week, he was most widely known for being a director on *Monty Python and the Holy Grail.* As an animator and filmmaker he poured creativity into his work; breaking the mold on the classical models of plot continuity. We strive to silly walk in in his shoes through originality of thought.

Quote

The Secure Act – What Estate Planners and Tax Advisors Need to Know for Clients with IRA and Pension Accounts

Feeling InSECURE with Estate Planning for Your Large IRA? Consider the "TEA POT" Trust System, Unless Paying Taxes Is Your Cup of Tea

A STUDY GUIDE FOR 529 PLANS

To Be or Notary, That is the Question...

NEW YEAR TIP : Don’t abbreviate 2020

For Finkel's Followers

Yesterday In History

Humor

Upcoming Events

Quote

“Why do I feel so exercised about what we think of the people of the Middle Ages?...I guess it's because so many of their voices are ringing vibrantly in my ears – Chaucer's, Boccaccio's, Henry Knighton's, Thomas Walsingham's, Froissart's, Jean Creton's... writers and contemporary historians of the period who seem to me just as individual, just as alive as we are today. We need to get to know these folk better in order to know who we are ourselves.” - Terry Jones

The Secure Act – What Estate Planners and Tax Advisors Need to Know for Clients with IRA and Pension Accounts

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EXECUTIVE SUMMARY:

The SECURE Act of 2019 is one of the most dramatic and widespread changes in income tax/estate planning law that we have seen in many years. This Act will immediately impact thousands of taxpayers, and thousands of documents and beneficiary designation arrangements now in place will do significant harm, for the reasons described in this newsletter.

It is essential that estate planners and tax advisors reach out to clients to inform them of the need for change in many situations.

The good news is that the choices are much easier to understand than many of the situations that had to be considered in the past, and that in any given situation there are usually only four choices, and fairly obvious primary criteria for making a decision.

As Albert Einstein said, "[a]ny fool can know. The point is to understand." This newsletter is intended to provide an easy to understand but thorough practical guide for estate planners and tax advisors who wish to give conscientious and practical advice for their clients.

We must point out from the onset that we have based much of this newsletter upon the excellent guidance already given by Natalie Choate in her Employee Benefits and Retirement Planning Newsletter #713 (December 26, 2019). We are big fans of Natalie's book entitled Life and Death Planning for Retirement Benefits, which is a required reference guide for

anyone practicing in this area. Our book entitled Planning for Ownership and Inheritance of Pension and IRA Accounts and Benefits in Trust or Otherwise is a shorter but thorough summation of the pre-2020 rules, and provides the reader with a list of Natalie's primary terms and abbreviations, which are also reproduced at the end of this Article for the convenience of Natalie's readers.

We have taken what Natalie and other credible commentators have said, along with the language of The SECURE Act and applicable House and Senate Committee Reports, and have organized our materials with learning and practical application in mind. You can obtain access to many excellent newsletters and tools to compare the payout options by going to https://www.leimbergservices.com.

We are in the process of updating our own book in this area, entitled Planning for Ownership and Inheritance of Pension and IRA Accounts and Benefits in Trust or Otherwise, which we expect to have available through LISI in approximately four weeks. Those who sign up to receive the book when completed will receive Excel charts and spreadsheets upon reserving a copy, and chapters each as they are updated by contacting Kim Copeland at kim@gassmanpa.com.

FACTS:

Just in time for Christmas, the SECURE ACT was enacted to make sweeping changes to the tax law regarding distributions from 401(k)s, IRAs, Roth IRAs, defined contribution plans, and other types of pension plans or qualified retirement accounts (collectively referred to as "Retirement Plans" for the purposes of this article).

Because many Americans have significant portions of their wealth in Retirement Plans, the changes resulting from the SECURE Act impact more taxpayers than the significant changes to the federal estate tax laws that were brought about by the Tax Cuts and Jobs Act of 2017. It is therefore crucial that advisors understand how the SECURE Act will affect Retirement Plans, and, most importantly, what planning should be implemented to address the effects of the Act.

I'm a little TEA POT, Short and Stout…For many families with large IRA and pension account balances, we believe that this will result in a "Two POT Trust" arrangement, which will be the subject of Employee Benefits & Retirement Planning Newsletter #716 to be published on January 7, 2020. Under this system, which we call the Twin TEA POT Trust System℠ (the Twin Tax Efficient Accumulation POT Trust System℠)ii, one POT Trust will receive the IRA/Plan after the death of the Participant, and a 10 year payout right. The Trustee will have the power to spray distributable net income among beneficiaries in the most tax efficient manner as and when distributions are received from the IRA/Plan by distributing income to beneficiaries in lower tax brackets or beneficiaries who have favorable tax attributes, such as net operating or suspended losses. The second POT Trust will hold assets that do not gene rate significant levels of income, such as equities and municipal bond funds, and the Trustee of the second POT Trust can make distributions to beneficiaries who are in higher tax brackets in order to make up for distributions made to other beneficiaries from the IRA/Plan POT Trust. "Two things are infinite: the universe and the benefit of Tea Pot trusts; and I'm not sure about the universe."iii

One issue that will need to be addressed with respect to this is IRC Section 643(f) and Treasury Regulation Section 1.643(f), which provide that two or more trusts will be treated as one if they have all three of the following:

> (1) substantially the same grantor, with married couples being considered as one grantor, even if they each separately establish a separate trust;
>
> (2) substantially the same primary beneficiaries, and
>
> (3) a principal purpose of such trust is the avoidance of income tax.

The use of a shadow trust to become the beneficiary of IRA/Plans after the death of the Plan Participant is commonly used, as retirement plan trusts often require that specific rules and limitations be abided by in order to qualify the trust as a "See Through Trust", and may therefore provide sufficient justification to establish a multiple trust arrangement for reasons other than to avoid income tax. The use of the Twin TEA POT Trust System℠ and the application of Section 643(f) will be discussed in greater detail in a subsequent newsletter as well as during our January 9, 2020 LISI Webinar entitled Practical Estate and Trust Planning After the SECURE Act.

The SECURE Act was somewhat of a surprise addition to the spending bill that was approved by Congress and signed into law by the President on December 20. While it was threatening to become law over the summer of 2019, it seemingly was lost in a political logjam that oftentimes can signal the death of legislation. Nevertheless, whether you think that the SECURE Act is a shiny gold ring or a lump of coal, it is here to stay, and it is important to learn how to plan within the guidelines and rules espoused by it. "Life is like riding a bicycle. To keep your balance, you must keep moving." Albert Einstein.

Before working methodically through the new rules and situations to which they apply, it will be useful for some readers to have a review or grasp of primary rules that will continue to apply, and to review some of the "lingo" as to both formal definitions and commonly used abbreviations that are used in this and many other articles:

1. When an IRA/Plan is made payable directly to an individual beneficiary who was married to the Plan Participant, the surviving spouse can roll the IRA/Plan into his or her own "Rollover IRA" and treat the IRA as if it was his or hers from the beginning.

Alternatively, if the surviving spouse wants to take out distributions before age 59 ½ and avoid the 10% excise tax on distributions taken
by a Participant before he or she reaches age 59 ½ (that would apply if the surviving spouse rolls over the IRA/Plan into his or her own IRA), he or she can treat all or part of IRA/Plan as an Inherited IRA and begin to take distributions each year that are equal to or larger than the required minimum distribution amounts. Under this approach, the surviving spouse can take required minimum distributions from the Inherited IRA over his or her life expectancy under the Single Life Table, with annual recalculation.

2. Individuals who have reached age 70½ can cause distributions of up to $100,000 a year to pass directly to charity to have the equivalent of a 100% charitable deduction by making a Qualified Charitable Distribution (QCD) from the IRA/Plan directly to public charity. The 70½ age still applies notwithstanding that required minimum distributions do not begin until after the Plan Participant attains age 72.

3. A Plan Participant who has reached the age of 70 ½ in 2019 will still be required to distribute the first required minimum distribution by April 1, 2020 to avoid penalties. A Plan Participant who has not yet reached age 70 ½ will not have to take a required minimum distribution until April 1st of the year following the year in which the Plan Participant attained the age of 72.

It is noteworthy that the failure to make an annual required minimum distribution without good cause results in a penalty equal to 50% of the amount that was required to be withdrawn, unless there is good cause for the failure to make distribution.

4. The prior law applies to any IRA/Plan where the Plan Participant has died prior to January 1, 2020, but the new Secure Act applies to beneficiaries who inherit an inherited IRA when the current beneficiary dies after January 1, 2020. The beneficiary of an IRA who keeps the IRA in place with the same or another custodian is still referred to as the beneficiary of an "inherited IRA."

A spouse who would otherwise inherit an IRA/Plan from a Plan Participant who died in 2019 can make a disclaimer within 9 months of the date of death of the Plan Participant, and therefore have the IRA/Plan assets pass to or for the benefit of descendants or other contingent beneficiaries under the prior rules which allow for the beneficiaries to potentially "stretch" the IRA required minimum distributions over the life expectancy of the beneficiary.

This can make a significant difference as to whether the surviving spouse of a Plan Participant who has died before January 1, 2020 elects to roll over an inherited IRA/Plan, to accept the benefits of a Conduit Trust or Accumulation Trust, or to disclaim whatever interest the surviving spouse would have had to enable descendants or other individual beneficiaries to use their entire life expectancy for distributions.

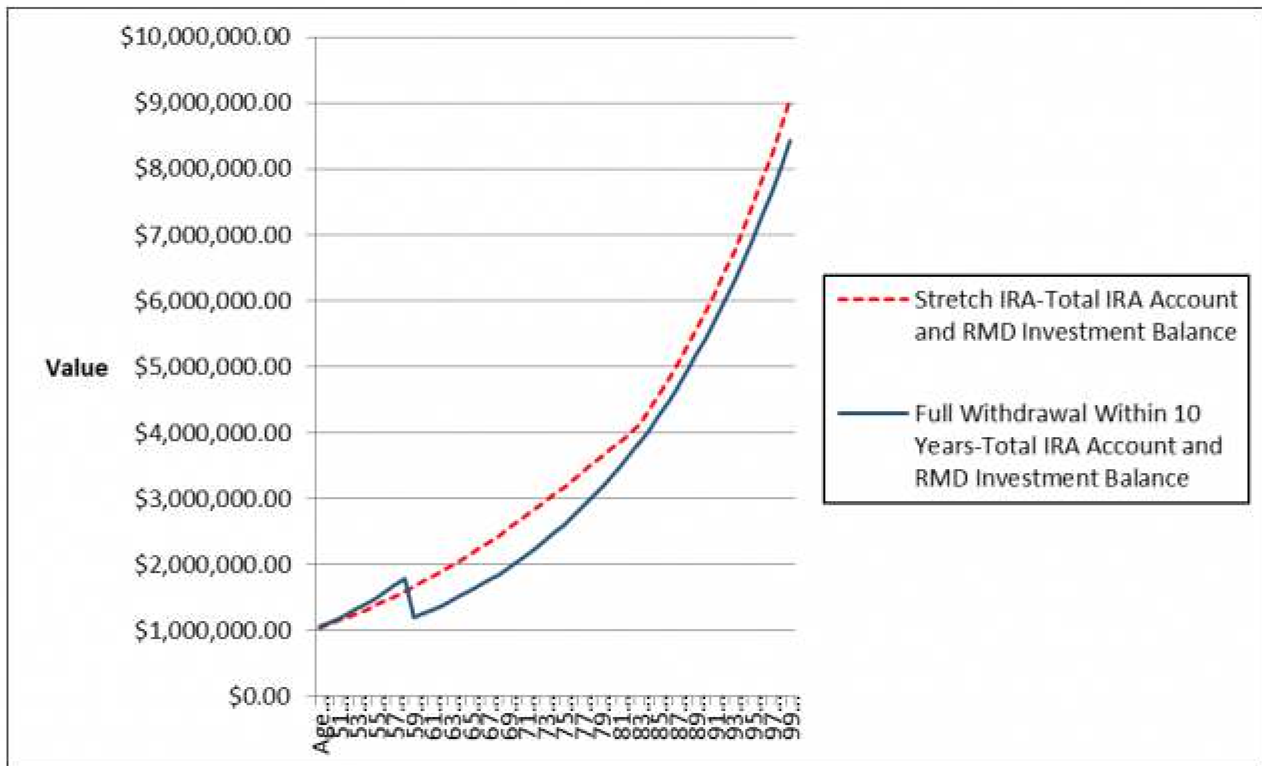
5. The advantages of income tax deferral for older individual beneficiaries are often overstated, but, relative to the ability to stretch required minimum distributions over the beneficiary's life expectancy, the 10-Year Rule can make a big difference from a mathematical standpoint.

While it is usually advantageous to defer income taxes from an income tax planning standpoint, the difference in terms of the actual after-tax net value of applicable assets available for intended beneficiaries has to be laid out on spreadsheets to be understood.

The authors have run calculations to determine the impact of the 10-Year Rule, as opposed to deferral over a Designated Beneficiary's life expectancy, and the long-term impact is substantial.

For example, assuming that a 50-year-old non-spouse beneficiary is the Designated Beneficiary of a $1,000,000 IRA that will have assets that grow at a 6% annual rate of return, and that the beneficiary is in the 37% income tax bracket, and will reinvest amounts distributed at a 5% after-tax rate of return, the loss of life expectancy deferral will result in a $470,492 difference in the amount of total assets remaining after taxes 10 years after the death of the Plan Participant, assuming that the 10-Year Rule applies. The difference is $594,905 after 20 years and $470,810 after 30 years.

A chart summarizing the numbers is as follows:



The differences are much less profound when a surviving spouse age 50 may choose between a rollover, a Conduit Trust or an Accumulation Trust, as pointed out in our Estate Planning Newsletter #2387 entitled Ten Portability Mistakes and What You Need to Know to Avoid Them. The same rules continue to apply when the spouse is the beneficiary of a Conduit Trust; however, if the spouse is a beneficiary of an Accumulation Trust, the 10-Year Rule will apply and result in a much less favorable payout method.

We will be glad to share our spreadsheets for this, if you will email agassman@gassmanpa.com. Please put “Secret Decoder Ring” in the RE line.

The bottom line is that it will be better in most situations to require that distributions be held in trust when there is a significant risk that a surviving spouse or other beneficiary would “misdirect, mismanage, or over spend” an inherited IRA or retirement account. Sometimes, focusing on tax implications to the detriment of non-tax planning considerations, such as misuse or improper spending of assets, can be foolish.

6. Conduit Trusts and Accumulation Trusts are still permissible and viable under the new law, but their utility under the new law is severely diminished. Conduit Trusts and Accumulation Trusts are collectively known as “See-Through Trusts,” and are special types of trusts whereby the IRS will look through the Trust to a “Designated Beneficiary” in order to determine whether the IRA benefits can be paid out over a period longer than 5 years or the life expectancy of the deceased Plan Participant, if the Plan Participant died after his or her Required Beginning Date. The SECURE Act retains the baseline default rule of the prior law which provides that the assets of any IRA/Plan that is paid to a non-individual or to a Trust that does not qualify as a See-Through Trust must be distributed within 5 years of December 31st of the calendar year of the Plan Participant’s death, or the life expectancy of the deceased Plan Participant if the Plan Participant died after his or her Required Beginning Date (the “At Least as Rapidly Rule”).

In order to qualify as a See-Through Trust, a Trust must be a Conduit Trust or an Accumulation Trust meeting the following requirements:

(A) The trust must be an irrevocable trust, at least on the day of the Plan Participant’s death, and must be valid under applicable state law.

(B) All beneficiaries of the trust are individuals and identifiable by the Designation Date (September 30th of the calendar year following the Plan Participant’s death). It is acceptable for the trust to have only one beneficiary.

(C) Information regarding the trust must be provided to the plan administrator by October 31st of the calendar year following the Plan Participant’s death.

(D) None of the trust assets can be available or used to pay creditors of the trust or the estate of the deceased Plan Participant after September 30 of the calendar year of the Plan Participant’s death.

A Conduit Trust is easier to draft and administer than an Accumulation Trust because the only two requirements (other than the above) are that any and all monies distributed from the IRA/Plan
to the trust must be immediately distributed to one or more named beneficiaries, referred to as the Designated Beneficiary. The primary disadvantage of a Conduit Trust is that the Designated Beneficiary has to receive payment, even if there are creditors, a divorce or spendthrift issues.

An Accumulation Trust is a Trust which provides that the Trustee can accumulate benefits for the benefit of one or more beneficiaries, so long as the Trust meets certain requirements, such as not having any non-individuals as beneficiaries of the Trust as of September 30th of the calendar year following the death of the Plan Participant, or any non-individuals as potential appointees under any power of appointment.

It is noteworthy that traditional provisions related to limiting the beneficiaries of such Trust to beneficiaries that are younger than the designated beneficiary are no longer applicable due to the fact that Accumulation Trusts are generally subject to the 10-Year Rule and not a life expectancy payout.

If and when an Accumulation Trust can receive distributions over the life expectancy of a named beneficiary, which would now only apply for a disabled or chronically ill beneficiary, the birth date of the oldest disabled or chronically ill beneficiary of the Trust will likely be controlling in the unlikely event that an Accumulation Trust would be payable to multiple disabled or chronically ill beneficiaries. In all other circumstances, the 10-Year Rule will apply when an Accumulation Trust is made the beneficiary of an IRA/Plan.

The lifetime stretch that these See-Through Trusts provided under the prior law has been replaced with a 10-Year Rule in many situations, as further described below.

7. Roth IRA and Roth 401k Plans still pay out tax-free and follow the same minimum distribution rules that apply to taxable plans.

<u>Our Special Lingo</u> - To save words and neuron paths we are using the following terminology in this Article: (“If you can’t explain it to a six year old, you don’t understand it yourself.” Albert Einstein)

1. <u>IRA/Plan</u> includes the following qualified retirement plans:

(a) IRA

(b) SIMPLE IRA

(c) Simplified Employee Pension (SEP)

(d) Employer sponsored retirement plans, such as 401(k) plans, defined benefit plans, defined contribution plans, and profit sharing plans

(e) 403(b) plans

(f) 457(b) plans

(g) Roth 401(k) plans

(h) Roth IRAs; however, Roth IRAs are not subject to the Required Minimum Distribution rules until the owner of the Roth IRA (or the spouse of the deceased owner who rolled over into his or her own Roth IRA) dies.

(i) Canadian Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Plans (RRIFs) will now be treated as US IRA equivalents to a certain extent as per Rev. Proc. 2014-55.

2. <u>Plan Participant</u> refers to an IRA owner or participant in a qualified retirement plan while alive, or after death.

3. <u>Required Beginning Date</u> is the date that a Plan Participant must begin taking required minimum distributions, which is April 1st of the year following the year in which the Plan Participant reaches the age of 72, or the age of 70 ½ if the Plan Participant reached the age of 70 ½ prior to December 31, 2019.

4. An <u>Accumulation Trust</u> is what we call an irrevocable trust that allows the Trustee to withhold, and thus “accumulate” distributions that would come from a qualified plan IRA or otherwise, but will nevertheless be considered to be a “See-Through Trust,” so that the IRS will look through the Trust to consider an individual beneficiary as the “Designated Beneficiary” for required minimum distribution purposes

5. A <u>Conduit Trust</u> is an irrevocable trust which provides that all distributions from the IRA/Plan must be distributed without delay from the Trust to an applicable individual. A Conduit Trust is also a type of “See-Through Trust,” so that the IRS will look through the Trust to consider an individual beneficiary as the “Designated Beneficiary” for required minimum distribution purposes

6. 5-Year Rule is the Required Minimum Distribution Rule that often requires account balances to be paid out within 5 years of December 31st of the calendar year of the Plan Participant's death for a Plan Participant who has not yet reached the Required Beginning Date. This is the default rule that will apply if no more favorable method of Required Minimum Distribution applies. If the Plan Participant dies after the Required Beginning Date, then, the 5-Year Rule cannot be used, and the life expectancy of the deceased Plan Participant will continue to be used under the "At Least as Rapidly" Rule described below. If and when a situation permits a taxpayer to use a lifetime payout, and the taxpayer would prefer to take no or very little distributions for any of the first four years, then the taxpayer is permitted to use the 5-Year Rule in lieu of a life expectancy or other applicable payment method, provided that the Plan Participant dies prior to his or her Required Beginning Date. For example, if the Plan Participant dies in 2025 before he has attained the Required Beginning Date, and no other more favorable method of payment applies, then all assets must be distributed from the IRA/Plan by December 31, 2030; and likewise, no distributions must be made whatsoever until December 31, 2030.

7. The "At Least as Rapidly Rule" applies as the default rule if the Plan Participant dies after the Required Beginning Date, and requires that the life expectancy of the deceased Plan Participant continue to be used. As noted above, if the Plan Participant dies after their Required Beginning Date, the 5-Year Rule cannot be used. For example, if the Plan Participant dies after he has attained his Required Beginning Date, then the beneficiary can elect to have assets distributed from the retirement plan ratably over the deceased Plan Participant's life expectancy so that the benefits come out "at least as rapidly" as provided by the Plan Participant's life expectancy.

8. The 10-Year Rule is now available as the method of withdrawal in many scenarios, and is very similar to the 5-Year Rule except that all benefits must be paid out of the IRA/Plan within 10 years of December 31st of the calendar year of the applicable triggering event. The applicable triggering event is one of the following:

(A) The death of a Plan Participant;

(B) The death of a surviving spouse who rolled over his or her IRA;

(C) The death of the current benefit of an inherited IRA; or

(D) Upon a minor beneficiary of an inherited IRA after December 31, 2019 reaching the age of majority.

For example, if a Plan Participant died on September 30, 2021, and the beneficiary is subject to the 10-Year Rule, then distributions do not have to be made until 10 years and three months later on December 31, 2031.

9. When Life Expectancy Payout Rules Apply. Under the new rules, a payout over the life expectancy of a Designated Beneficiary can only apply in the below enumerated circumstances which apply only when IRA plans are made payable to or for the benefit of certain beneficiaries known as the "Eligible Designated Beneficiaries."

Please note that the life expectancy to be used will be on the life of the applicable Eligible Designated Beneficiary specified under each of the following categories:

(A) Where the surviving spouse is the beneficiary, either directly, or as the sole lifetime beneficiary of a Conduit Trust;

(B) Where a minor is the beneficiary of the IRA/Plan, whether directly or as the sole lifetime beneficiary of a Conduit Trust, but only until the minor reaches the age of majority. Once the minor reaches the age of majority, the 10-Year Rule applies so that all benefits must be distributed from
the IRA/Plan within 10 years of December 31st of year the minor reaches that age of majority;

(C) Where a "disabled" or "chronically ill" individual is a beneficiary of the IRA/Plan, either directly, as the sole lifetime beneficiary of a Conduit Trust, or as the sole lifetime beneficiary of an Accumulation Trust (even if the Accumulation Trust is created under a trust instrument which provides for other beneficiaries). The exception that allows the disabled or chronically ill beneficiary who is the sole lifetime beneficiary of an Accumulation Trust to qualify for the Life Expectancy Rule is unique and does not apply to other Eligible Designated Beneficiary categories;

(D) Where a beneficiary or individual is no more than 10 years younger than the Plan Participant and is a beneficiary of the IRA/Plan, either directly, or as the sole lifetime beneficiary of a Conduit Trust.
If a Plan Participant dies the Required Beginning Date, then the beneficiary or Trustee will have the choice of using the life expectancy of the deceased Plan Participant in lieu of using either of the life expectancy of the Eligible Designated Beneficiary of the Trust or the 10-Year Rule.

COMMENT:

Now that we have covered foundational aspects of the prior and new law, we can describe the rules that planners need to be able to work with in this area. In doing so we will repeat much of what we have said above, so perfect memory and recall is not needed to continue through this Letter.

1. Good News For Individuals Who Have Not Had to Begin Taking Annual Required Minimum Distributions, and Individuals over the Age of 70½ That Want to Continue Contributing to Traditional IRAs.

Individuals who have not reached age 70½ by December 31, 2019 will be able to use age 72 under the Required Minimum Distribution Rules. This means that individuals that have not reached age 70½ by December 31, 2019 have an additional one and one-half (1.5) years to defer taking
required minimum distributions. The SECURE Act allows taxpayers with "earned income" to make contributions to traditional IRAs beyond the age of 70½. The previous law prohibited contributions to traditional IRAs upon an individual reaching the year in which they attain the age of 70½. Therefore, individuals who have earned income from wages or self-employment can make contributions to traditional IRAs in 2020 and each year thereafter, regardless of their age (so long as they have earned income).

A Plan Participant who has reached the Required Beginning Date can take some or all of the first year Required Minimum Distributions on any day or days during the calendar year in which the Required Beginning Date is reached, or by April 1st of the following calendar year. Therefore, the first two annual Required Minimum Distributions can be taken in the calendar year following the year in which the Plan Participant has reached the Required Beginning Date (by April 1st as to payments required for the first year, and by December 31st as to the payments required for the second year).

The Plan Participant should consult with a tax advisor after reaching the Required Beginning Date to determine whether the "first year required payment" should be deferred until the following year, based upon the expected tax bracket or rates of asset growth applicable to the Plan Participant.

If the Plan Participant is going to be in the highest tax bracket in both years, then it makes sense to defer all of the first year Required Minimum Distribution until the second year. If the Plan Participant is not in the highest tax bracket, then it makes sense to spreadsheet the expected tax liability for the two years, while applying a time value of money adjustment for deferral, in order to determine how to best apportion the first year payment.

For example, Claire reaches age 72 on May 1, 2022, and has a Required Minimum Distribution of 3.65% of the account balance that must be taken prior to April 1st of 2023, and a 3.77% distribution that must be taken prior to December 31st of 2023. Claire can pay the above percentages in 2022 and 2023, or may elect to make a 3.65% payment of the 2022 account balance, and a 3.77% payment of the 2021 account balance, both in 2023. The amount that would have been paid out in 2022 does not reduce the balance of the amount held in the plan that is used to determine the 2023 Required Minimum Distribution amount. For example, if the account is worth $1,000,000 as of December 31, 2020, and grows by 5.00% during the subsequent two years, then Claire could have distributed 3.65% ($38,325.00) in 2020 and 3.77% ($40,047.15) in 2021 for a total of $78,372.15. If Claire waits until 2021 to satisfy both years, then the total amount paid will be $79,889.25.

What after tax rate of return on investments would a hypothetical IRA owner need to earn to make it worthwhile to delay taking the first year minimum distribution, after accounting for the excess amount that has to be paid out (but later) if the first year payment is moved from December 31st of the year after reaching the Required Beginning Date to April 1st of the second year after reaching Required Beginning Date? Based upon the following numbers we have concluded that the rate of return is approximately 2.4%. A return below this level will not generate enough tax-deferred growth to offset the additional tax owed in the second year.

Required Beginning Date First Year Delay Crossover Analysis			
IRA Rate of Return	**Option One - No Delay of RMD**	**Option Two - Delay First Year's RMD**	**Difference (Two - One)**
1.00%	$96,677.33	$96,639.87	$(37.46)
2.00%	$98,601.21	$98,590.34	$(10.87)
3.00%	$100,544.04	$100,564.16	$20.12
4.00%	$102,505.83	$102,561.43	$55.60
5.00%	$104,486.57	$104,582.28	$95.71
6.00%	$106,486.27	$106,626.81	$140.54
7.00%	$108,504.92	$108,695.13	$190.21
8.00%	$110,542.53	$110,787.37	$244.84

2. Good News for Roth IRA and 401(k) Holders.

The new rules continue to permit Roth IRA and Roth 401(k) holders to retain these accounts without taking any required minimum distributions during the lifetime of the Plan Participant. The accounts continue to grow tax-free, and what is taken out of the account will also be tax-free.

Given that many families will be taxed sooner and at higher income tax rates on inherited IRAs, this at least pushes the scale towards converting,
regular 401(k)s and pension plans, and traditional IRAs, into Roth accounts. Nevertheless, clients should be cautious before paying income taxes now based upon the possibility of future income tax savings. As we have learned many times over, the tax law is permanent only until Congress decides to change it.

For example, taxpayers of moderate means might have a tremendous need for money from their IRA to pay for home health care expenses, and may have significant tax deductions that will offset the withdrawals from IRA/Plan when the home health care has been prescribed by a physician. See Employee Benefits and Retirement Planning Newsletter #549 by Alan Gassman, Kenneth Crotty and Christopher Denicolo entitled One Good Reason Not to Do a Roth IRA Conversion.

3. The Default 5-Year Rule and "Designated Beneficiary" Concept Are Still in Effect, Although the "Life Expectancy Rule" Has Been Replaced By the New "10-Year Rule" (With 5 Notable Exceptions).

The previous law provided that all assets held under an IRA/Plan must be distributed out of the plan within 5 years of December 31st of the calendar year of the Plan Participant's death unless one of the following applied:

> (a) The Plan Participant died after his or her Required Beginning Date, in which event the post-death required minimum distribution payments could have been made over the life expectancy of the deceased Plan Participant as if he or she were still alive; or
>
> (b) The assets in the IRA/Plan could have been distributed annually over the life expectancy of the Designated Beneficiary named by the deceased Plan Participant.

The ability to "stretch" required minimum distributions from IRA/Plans over a beneficiary or the Plan Participant's life expectancy is known as the "Life Expectancy Rule." This Rule was the foundation for the pre-2020 "Stretch IRA" planning technique, which allowed for distributions from an inherited IRA/Plan and the corresponding income tax burden associated with such distributions, to be deferred over many years by an individual (or appropriately drafted trust).

The sole change to the above under the SECURE Act is that the Life Expectancy Rule has been replaced by a 10th year payout deadline, with no annual distributions being required in the 1st thru 9th years, except in the case of specific types of "Eligible Designated Beneficiaries" (more on this later). Therefore, the Stretch IRA for many clients no longer applies, and instead all assets must be paid out from the IRA/Plan within 10 years of December 31st of the calendar year in which the Plan Participant dies.

While the lifetime stretch IRA has been eliminated for most situations where the surviving spouse is not the sole beneficiary of the IRA/Plan, the concept of a "Designated Beneficiary" is still alive and well. A "Designated Beneficiary" is an individual or individuals named as beneficiary of the IRA/Plan. When a certain type of trust satisfies the IRS' rules to qualify as a See-Through Trust, the oldest trust beneficiary is considered to be the "Designated Beneficiary." Before 2020, the Designated Beneficiary's life expectancy governed the distribution period of the required minimum distributions, and such distribution period would continue to apply even after the Designated Beneficiary has died. Now, the 10-Year Rule applies in most cases where the Life Expectancy Rule would have applied.

Therefore, trusts which will receive IRA/Plan benefits will still need to qualify as "See-Through Trusts" to have the benefit of the 10-Year Rule, and must have special provisions which will allow the trust to qualify as a See-Through Trust in order to be able to take advantage of the 10-Year Rule. If such a trust does not have the special provisions, then the 5-Year Rule will apply unless the At Least as Rapidly Rule applies, if the Plan Participant died after his or her Required Beginning Date (after age 72). Accordingly, a trust must be specially designed to not benefit any charities or non-individual beneficiaries, and to meet the other requirements necessary to qualify a trust as a See-Through Trust; however the consequences for not properly qualifying as a See-Through Trust are not nearly as punitive as they have been in the past in situations where the 10-Year Rule would otherwise apply.

4. "Eligible Designated Beneficiaries" Are Excepted from the 10-Year Rule, and Are Entitled to Use the Life Expectancy Rule (Albeit Temporarily In Some Cases)

As mentioned above, certain beneficiaries known as "Eligible Designated Beneficiaries," are excepted from the 10-Year Rule limitation, and therefore entitled to use the Life Expectancy Rule with respect to required minimum distributions. In the case of such Eligible Designated Beneficiaries, the Life Expectancy Rule can allow required minimum distributions to be made over the Designated Beneficiary's life expectancy, rather than under the 10-Year Rule.

Now that we have the basics and some advanced information, we can apply these rules to the five specific categories of Eligible Designated Beneficiaries.

(a) The Plan Participant's Surviving Spouse. The surviving spouse can use the Life Expectancy Rule to take out distributions over his or her life expectancy and delay taking the first distribution from a Rollover IRA until after reaching age 72, or if the spouse elects to take the IRA/Plan as a beneficiary, distributions need not begin until the later of (1) December 31st of the year following the Plan Participants death, or (2) December 31st of the year in which the Plan Participant would have reached the age of 72, but only if the IRA/Plan is made payable to the spouse as a beneficiary directly, or to a Conduit Trust for the surviving spouse's benefit. Note that an Accumulation Trust which benefits a surviving spouse does not allow for the Life Expectancy Rule to apply.

(b) A Minor Child of the Plan Participant. A child under the age of majority can use the Life Expectancy Rule through reaching the age of majority, and then the 10-Year Rule applies. A child reaching the age of "majority" is defined by the law of the state of child's residence, which is 18 in 47 states, 19 in Alabama and Nebraska, and 21 in Mississippi. Pursuant to Treasury Regulation Section 1.401(a)(9)-6, A-15, a child may be treated as having not reached the age of majority if the child has not completed a "specified course of education" and is under the age of 26. Currently, because the statutes and regulations do not provide a definition or any additional instruction, it is unclear what a "specified course of education" is. Treasury Regulation Section 1.401(a)(9)-6, A-15, also states that a child who is disabled within the meaning of section 72(m)(7) when the chi ld reaches the age of majority may be treated as having not reached the age of majority so long as the child continues to be disabled.

A Conduit Trust for the benefit of the minor child is entitled to use the Life Expectancy Rule as if the IRA/Plan was payable directly to the minor child, but an Accumulation Trust which benefits such child will not qualify for the Life Expectancy Rule, so the IRA/Plan must be completely distributed within 10 years of December 31st of the calendar year in which the Plan Participant dies.

It is important to note that the minor child exception applies only to a child of the Plan Participant and does not apply to grandchildren or any other minors who might inherit the Plan Participant's IRA/Plan. Therefore, an IRA payable to a grandchild or to a trust for a grandchild is required to be distributed to the grandchild or trust for the grandchild within 10 years of December 31st of the calendar year of the Plan Participant's death, or if payable to a trust that is not a "See-Through Trust" within five years or pursuant to the At Least As Rapidly Rule depending upon if the Plan Participant died before or after his or her Required Beginning Date.

(c) Disabled Beneficiaries.

If a beneficiary is disabled as determined pursuant to Internal Revenue Code §72(m)(7), then the Life Expectancy Rule method can be used. This follows the Social Security disability definition of disabled, and requires a very high degree of disability, as further discussed below. In order to qualify for this exception, the IRA/Plan must be payable directly to the Eligible Designated Beneficiary or to a Conduit Trust for the sole lifetime benefit of the disabled beneficiary. Additionally, the Life Expectancy Rule will apply where the IRA/Plan is made payable to an Accumulation Trust for the sole benefit of the disabled beneficiary, which is a unique exception that applies only where a beneficiary is disabled or chronically ill. Nevertheless, after the disabled beneficiary's death, the 10-Year Rule applies so that IRA/Plan benefit that was held for the disabled individual or the applicable Conduit Trust or Accumulation Trust must be distributed out of the plan within 10 years of December 31st of the calendar year in which the disabled beneficiary dies.

Internal Revenue Code Section 72(m)(7) provides that "an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual will not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require."

Treasury Regulation Section 1.72-17A(f) states that under Section 72(m)(7), "when determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment." Additionally, "consideration shall also be given to other factors such as the individual's education, training, and work experience." The substantial gainful activity to which section 72(m)(7) refers is "the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability or prior to retirement if the individual was retired at the time the disability arose."

Further, this regulation states that in order to meet the requirements of section 72(m)(7), "an impairment must be expected either to continue for a long and indefinite period or to result in death." The term "indefinite" is used in the sense that it "cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity." An individual will not be deemed disabled if, "with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity."

Treasury Regulation Section 1.72-17A(f) also provides the following examples of impairments which would ordinarily be considered as preventing an individual from engaging in substantial gainful activity. It is noteworthy that the existence of one or more of the following impairments, or an impairment of greater severity, does not

guarantee that there will be a finding
that an individual is disabled:

(i) Loss of use of two limbs;

(ii) Certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease;

(iii) Diseases of the heart, lungs, or blood vessels which have resulted in major loss of heart or lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that despite medical treatment breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores;

(iv) Cancer which is inoperable and progressive;

(v) Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory;

(vi) Mental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual;

(vii) Loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye after best correction, or has a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees;

(viii) Permanent and total loss of speech;

(ix) Total deafness uncorrectable by a hearing aid.

(d) Chronically Ill Individuals.

Likewise, if a beneficiary is “chronically ill” as determined under Internal Revenue Code §7702B(c)(2), then the Life Expectancy Rule will apply in the same manner as provided above, and the 10-Year Rule will apply after the death of such chronically ill individual. As with disabled beneficiaries, the chronically ill exception applies only if the IRA/Plan is made payable directly to the chronically ill beneficiary, to a Conduit Trust or Accumulation Trust for the sole lifetime benefit of the chronically ill individual.

Internal Revenue Code Section 7702B(c)(2) provides that “the term “chronically ill individual” means any individual who has been certified by a licensed health care practitioner as:

(i) being unable to perform (without substantial assistance from another individual) at least 2 of the following daily living functions for a period of at least 90 days due to a loss of functional capacity:

1. Eating;
2. Toileting;
3. Transferring (moving from bed to chair to toilet, etc.);
4. Bathing;
5. Dressing; and
6. Urinary continence.

(ii) having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or

(iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

It is ironic that the definition of disability from the Social Security law can be used to satisfy the definition of chronically ill individual, but is not used in the definition of disability itself under the SECURE Act. This may have been inadvertent.

A licensed health care practitioner must certify that such individual meets such requirements within the preceding 12 month period, so certification must occur annually and is crucial.

(e) A Beneficiary Less than 10 Years Younger than the Plan Participant.

The Life Expectancy Rule also applies where an IRA/Plan is made payable to an individual (or to a Conduit Trust for the sole lifetime benefit of an individual) who is not more than 10 years younger than the Plan Participant. However, the 10-Year Rule can also apply upon the death of such beneficiary.

Therefore, it is advantageous for a Plan Participant to leave IRA/Plan assets to a beneficiary who is less than 10 years younger than him or her, assuming that the beneficiary's life expectancy is well over 10 years.

5. Now That We Understand the Rules, What Do We Do Now?

a. When the Surviving Spouse is the Beneficiary. "When you are courting a nice girl an hour seems like a second. When you sit on a red-hot cinder a second it seems like an hour. That's relativity." Albert Einstein

For most married couples, the question in IRA inheritance planning is how to best benefit the surviving spouse while deferring income taxes, saving the inheritance from a subsequent spouse, creditors, or other threats to wealth, and giving the surviving spouse reasonable control without over-complicating the situation. When one spouse dies leaving the other spouse or a trust for the spouse as a beneficiary, one of the following four scenarios will apply:

i. Spousal Rollovers Still Work Fine.

To maximize income tax deferral and for simplicity, the Plan Participant can make their spouse the primary beneficiary of the IRA and pension accounts.

The spouse can roll the account balances to his or her own "rollover IRA," and will not need to begin taking distributions until April 1st of the year following the year in which the surviving spouse reaches age 72. The IRA will be treated exactly as if it was the surviving spouse's IRA from inception.

The downsides of the spousal IRA rollover include the uncertainty or problematic probabilities that the spouse may over spend the IRA, invest unwisely, or leave the IRA to one or more individuals or entities not favored by the first dying spouse.

ii. Inherited IRAs Still Work Fine.

The surviving spouse can also decide to become the beneficiary of the IRA in lieu of rolling over the IRA into his or her own IRA. If the spouse decides to keep the IRA in place and simply be the beneficiary (this is often referred to as an "Spousal Inherited IRA"), then the Life Expectancy Rule can be used, and distributions will be made from the IRA based upon the surviving spouse's remaining life expectancy. If the surviving spouse takes the IRA as a beneficiary, then required minimum distributions must begin by the later of (1) December 31st of the year following the year of the decedent's death; or (2) December 31st of the year in which the deceased Plan Participant would have reached age 72, regardless of surviving spouse's age.

A surviving spouse who has not yet reached the age of 59½ and needs to withdraw from the IRA will need to take the IRA as a beneficiary (rather than rolling it over) in order to avoid imposition of the 10% excise tax that applies if and when a Plan Participant withdraws assets from his or her Non-Roth IRA/Plan prior to attaining the age of 59½. Alternatively, the surviving spouse may "annuitize" a rollover IRA by investing the IRA assets in an annuity contract whereby the insurance carrier issuing the contract will make a series of equal annual or more frequent lifetime payments to the IRA owner. These payments will be considered to satisfy the minimum distribution rules, and neither of the payments nor the value of an annuitized annuity will be aggregated with any other IRA or retirement plan for purposes of calculating the minimum distribution requirements. The annuitized payments will ty pically exceed the Required Minimum Distribution amounts that would have applied.

iii. At First Blush, the Spousal Conduit Trust Looks More Attractive than under Prior Law, But is it Really?

A Conduit Trust is a trust that is named as the beneficiary of the IRA/Plan that is required under the trust agreement to pay the Designated Beneficiary (in this case the surviving spouse) exactly what is distributed from the IRA account, without delay, regardless of whether the spouse needs the money, or might even have to give a required distribution to a creditor.

This at least protects the part of the IRA that has not been distributed, and allows the trustee of the trust to take out distributions using the life expectancy of the surviving spouse, recalculated annually.

If the surviving spouse has reached age 72, and is already required to take out required minimum distributions from his or her own IRA, then the tax impact and the timing of required minimum distributions to the spouse are

almost as good under the Conduit Trust as it will be in a rollover IRA, but the principal and management of the IRA will be much better protected.

Additionally, using a Conduit Trust causes required minimum distributions to be distributed out of the Trust to the applicable Designated Beneficiary, which means that any such distributions will not be protected from creditors or unwise spending of the beneficiary.

Because of these rules, many couples who would otherwise use rollover IRAs or Conduit Trust IRA arrangements may consider the use of an Accumulation Trust described below, and sacrifice an increase in taxes, particularly in situations where the spouse can benefit from additional protection from creditors, future spouses, possible dementia, and otherwise.

It is unknown whether a trust that qualifies as a Conduit Trust and is later "amended" by a State Court proceeding, decanting, or an Action By Trust Protectors who have no fiduciary duties, in order to require that an IRA distribution not be paid to a beneficiary will cause retroactive disqualification and penalties for having considered such trust to have been a Conduit Trust from inception until when such modification occurs. It seems likely to the authors that many taxpayers will "take their chances" on or before the time when a large distribution has to be made, if the beneficiary would otherwise lose or would be sure to misspend large distributions, and may be uncollectible from an IRS standpoint.

Toggling from a Conduit Trust to an Accumulation Trust (and Vice Versa?).

Private Letter Ruling 200537044 confirmed that it is possible to "Toggle" what would have been a Conduit Trust into an Accumulation Trust on or before the Designation Date (September 30th of the calendar year of death of the Plan Participant). The conversion may only occur once, regardless of its direction. This can be accomplished by providing powers to independent Trust Protectors named under the trust agreement, if the exercise of such powers will be considered a disclaimer under state law that will result in the disclaimed powers and rights being considered as never having existed (i.e., void ab initio). The Trust Protectors would have the power to void the provision in the trust agreement that requires that all Required Minimum Distributions be currently distributed to the Designated Beneficiary of the trust. This can enable the trustee to accumulate IRA/Plan distributions in trust, and distribute such funds according to his or her discretion.

The Toggle provision described above will typically provide that the following changes will apply when the Toggle switch is flipped:

A. Remove any Non-Person beneficiary as a beneficiary of the trust.

B. Remove any possible individual beneficiary older than the Designated Beneficiary as a possible beneficiary of the trust.

C. Restrict any power of appointment over trust assets to be exercisable solely in favor of individuals younger than the Designated Beneficiary.

D. A non-generation skipping exempt Conduit Trust (where IRA/Plan distributions are all paid to the Designated Beneficiary) need not limit the exercise of any power of appointment to individuals younger than the Designated Beneficiary.

For example, a trust that provides that all IRA/Plan distributions are to be paid to the Surviving Spouse, and that a charity is a permissible beneficiary, could be changed by having the spouse disclaim the right to receive all IRA/Plan distributions and any power of appointment that he or she has over the IRA/Plan distributions (without disclaiming the right to receive amounts as needed for health, education, maintenance and support), and the charity can be paid out in full, or paid enough so that it agrees to no longer be a beneficiary as of the Designation Date. If the other requirements for an Accumulation Trust are met, then this will be considered to have been successfully toggled to an Accumulation Trust.

Toggling from a Conduit Trust to an Accumulation Trust has several benefits, including creditor protection and asset preservation, especially if the beneficiary is young, unsophisticated, or may have creditor, spendthrift, or divorce risk factors. Several states (including Florida) provide statutory creditor protection for inherited IRAs/Plans held by beneficiaries in their individual name. However, any distribution from a retirement plan will not be exempt from the beneficiary's creditors in some states. As further discussed in Chapter One, Section I (G)(1) of this handbook, Florida Statute Section 222.21(2)(c) provides that any money or other assets, or
any interest in any fund or account that is creditor exempt, does not cease to be exempt by reason of death or a direct transfer or eligible rollover to an inherited IRA/Plan. This is one reason why using an Accumulation Trust will often be favored over leaving an IRA/ Plan outright to a Designated Beneficiary or to a Conduit Trust.

Conversely, toggling from an Accumulation Trust to a Conduit Trust could possibly occur by giving Trust Protectors the ability to mandate distribution of all Required Minimum Distributions made to the trust to a specified Designated Beneficiary. This could be beneficial in situations where a beneficiary, who once had creditor issues, is free of such issues

before September 30 of the year following the year of the death of the Plan Participant. However, the authors are not aware of any ruling or precedential authority which would permit the toggling of an Accumulation Trust into a Conduit Trust, and the IRS might be less inclined to approve such toggling and may claim that this constitutes the addition of beneficiaries or trust provisions, as opposed to a disclaimer or removal.

Caution should be exercised when employing the toggling strategy. The endorsement of this strategy by the IRS has occurred only under the above Private Letter Ruling, and the IRS has since indicated that post-death trust modifications will not be favored. Natalie Choate's book, Life and Death Planning for Retirement Benefits, has the following to say about this:

> Some advisors advocate the "switch" trust as a planning technique, seemingly regarding this single rather messy PLR as if it established an IRS-approved prototype trust. Yet the IRS's subsequent turn against post-death trust modifications (see § 4.5.06) makes it unclear whether this PLR could be duplicated today. An alternative view is that the "toggle" approach involves substantial complications, relying on a shaky "precedent," to obtain a modest bequest.

"In the middle of difficulty lies opportunity." Albert Einstein

Natalie's book at Section 4.5.06 states as follows:

> "[A]bsent specific authority in the Code or Regulations, the [post-death] modification of…[a trust] will not be recognized for federal tax purposes." – Francis V. Sloan, IRS, in PLR 201021038
>
> The post-death "reformation" of the decedent's trust or will should be granted by a court and recognized by the IRS if it appears that (for example) the attorney who drafted the document made a mistake and did not write what the now-deceased client told him to write. But many PLR requests involving post-death reformations do not involve such "scrivener's errors." Rather, it often appears that the income tax effects of the estate plan were simply ignored until after the client's death, at which point "reformation" was used (by collusion among the beneficiaries, with the consent of a compliant judge) to redraft the documents in a way that (they hoped) would produce better income tax results. The IRS is not going to accept this type of "reformation." See, e.g., PLR 200944059, in which the participant died leaving his IRA to a trust for the benefit of his Surviving Spouse and issue. The Surviving Spouse and the remainder beneficiaries, with state court blessing, agreed to terminate the trust (so the Surviving Spouse could roll over the IRA held in the trust). The IRS denied the rollover.

These are all challenges that must be considered in the design and implementation of Conduit Trusts.

iv. <u>The Spousal Accumulation Trust.</u>

An Accumulation Trust is a trust that can receive distributions from the IRA/Plan and accumulate them without having to pay them directly to a particular beneficiary. Typically, the Trustee of an Accumulation Trust has the power to withhold distributions or to make them as needed for the health, education, maintenance and support of the spouse and common descendants of the spouse and the Grantor. Unfortunately, even a properly drafted Accumulation Trust for the sole or primary benefit of the surviving spouse of the Plan Participant will not qualify for the Life Expectancy Rule, based upon the rationale that distributions can be accumulated for non-spouse beneficiaries.

Nevertheless, the new law permits distributions from the IRA/Plan held under an Accumulation Trust to be delayed under the 10-Year Rule.

If a Trust does not qualify as a See-Through Trust (either a Conduit Trust or an Accumulation Trust), then the 5-Year Rule applies, unless the Plan Participant died after his or her Required Beginning Date, in which event the At Least As Rapidly Rule will apply.

b. <u>When an Adult Non-Spouse Individual Who is Not Disabled, Chronically Ill, or Less Than Ten Years Younger Than the Plan Participant is the Beneficiary.</u>

The choices here are simple. If an adult who is not (1) a spouse of the Plan Participant; (2) chronically ill; (3) disabled; or (4) less than 10 years younger than the Plan Participant is the beneficiary, then the 10-Year Rule likely will apply, regardless of whether IRA/Plan benefits are left to the beneficiary directly, through a Conduit Trust, or through an Accumulation Trust.

There is one notable exception to the above. If the Plan Participant died after his or her Required Beginning Date (meaning that Required Minimum Distributions were required prior to the Plan Participant's death), then the beneficiary can elect to continue taking required minimum distributions based upon the life expectancy of the deceased Plan Participant. This is known as the "At Least as Rapidly" Rule and can be beneficial in situations where the Plan Participant died shortly after reaching the age of 72 due to the fact that the deceased Plan Participant's life expectancy could be longer than 10 years. Although, the benefit of being able to accumulate IRA

assets tax free without having to take any distributions until at least 10 years may outweigh the benefit of "stretching" the IRA out over the Plan Participant's remaining life expectancy under the "At Least as Rap idly Rule." Planners should consider this and run the numbers as numerous factors weigh into this decision.

The life expectancy that applies where the "At Least as Rapidly Rule" is used is as follows, and in each case the distribution percentage would be calculated by taking the applicable divisor and reducing it by one in each year after the first year of the Plan Participant's death:

Ages 74-81
73 15.5 years
74 14.1 years
75 13.4 years
76 12.7 years
77 12.1 years
78 11.4 years
79 10.8 years
80 10.2 years
81 + less than 10 years

The above rules will also apply to a minor child if the Plan Participant was not his or her parent (such as a grandchild, niece or nephew, or unrelated person).

c. <u>When a Minor Child of the Plan Participant is a Beneficiary.</u>

When a minor child of the deceased Plan Participant is the sole beneficiary of the IRA, then the Life Expectancy Rule will apply to require very small distributions each year until the minor child reaches the age of majority, and

after that no distributions will need to be made until December 31st of the year 10 years after the child reaches the age of majority under the 10-Year Rule.

The same analysis applies if the minor child is the beneficiary of a Conduit Trust. Accordingly, the Life Expectancy Rule can be used until the child reaches the age of majority, at which time the 10-Year Rule will apply and the entire IRA must be distributed within 10 years.

The payout percentages for a minor are very low, and as follows:

Ages 1-13	Ages 14-26
1 1.23%	14 1.45%
2 1.24%	15 1.47%
3 1.25%	16 1.49%
4 1.27%	17 1.52%
5 1.29%	18 1.54%
6 1.30%	19 1.56%
7 1.32%	20 1.59%
8 1.34%	21 1.61%
9 1.36%	22 1.64%
10 1.37%	23 1.66%
11 1.39%	24 1.69%
12 1.41%	25 1.72%
13 1.43%	26 1.75%

*The 10-Year Rule may apply beginning at age 18 or 21, depending upon when the minor reaches the “age of majority.”

It is not clear whether there can be one Conduit Trust for multiple minors or whether there will have to be separate IRAs payable to separate trusts for each minor child. It is likely that if all beneficiaries are minors then the Life Expectancy Rule can be used based upon the age of the oldest trust beneficiary, and once the oldest trust beneficiary reaches the age of majority, the 10-Year Rule will apply. This question will likely be addressed in future Treasury Regulations or other pronouncements. Until then, it will be safest to have an IRA payable to separate subtrusts which can come into existence under the will or a trust on the death of the Plan Participant so that there

is a separate trust for each minor beneficiary which can receive distributions from a separate IRA/Plan, or a percentage of distribution rights.

For example, instead of leaving an IRA payable by beneficiary designation to a client's living trust which then divides into separate trusts for the children, the beneficiary designation of the IRA can provide for 20% of the IRA/Plan to be payable to each of five separate irrevocable trusts for the five separate children, each of which are established under the client's living trust agreement. Many commentators believe that the prior law provides that an IRA could be made payable by a beneficiary designation on a percentage basis to separate subtrusts and that this would consider each separate portion of the IRA to be treated as if a separate IRA had been made payable to such separate trust.

If the IRA is made payable to an Accumulation Trust for minors, then the 10-Year Rule will apply. Therefore, clients will have to decide whether the tax deferral afforded by leaving the IRA/Plan directly to a minor beneficiary or to a Conduit Trust for a minor beneficiary is more important than protecting the assets by having them payable to an Accumulation Trust for the beneficiary's lifetime. Obviously, the income tax results are more favorable if the IRA/Plan is left directly to or in a Conduit Trust for a minor child, but this approach will cause the IRA benefits to be paid out to the child no later than then 10 years after the child reaching the age of majority, which could subject such assets to unwise spending, the child's creditors and/or possible future divorcing spouses. Additionally, clients will have to assure that their estate plan is appropriately coordinated so that any IRA/Plan benefits t hat would be left to or a minor child or to a Conduit Trust for the benefit of a child while the child is a minor will be switched to an Accumulation Trust (if possible) for the benefit of the child after the child reaches the age of majority.

However, for most clients, it is best to not let the tax tail wag the dog where there is real concern that any IRA/Plan assets that are left directly to a child (or to a Conduit Trust for the child) would cause loss of such assets or would subject any such assets to the child's creditors or other threats to wealth.

A preferable approach is leaving the assets to an Accumulation Trust for the benefit of the child despite the fact that such approach would be subject to the 10-Year Rule at best (as opposed to the Life Expectancy Rule that could be achieved by leaving the IRA/Plan directly to the minor child or to a Conduit Trust for the minor child), if the IRA/Plan benefits would be unwisely or improperly spent by the minor child, or subject to the minor child's creditors or other threats to wealth when the assets are distributed from the IRA/Plan. This is akin to a 100% tax!

As mentioned above, it is unclear when a beneficiary will be considered to be a minor, and this ultimately depends upon state law. Most states define a minor as someone who has not yet reached the age of 18, while some states make this age 19 (Alabaman and Nebraska) or 21 (Mississippi). While Treasury Regulation Section 1.401(a)(9)-6, A-15, states that a child may be treated as having not reached the age of majority if the child has not completed a "specified course of education" and is under the age of 26, it is unclear if and how this definition will apply for purposes of determining if a beneficiary is a minor under the SECURE Act.

d. <u>When a Chronically Ill or Disabled Individual is the Beneficiary</u>

If an IRA is made payable directly, or through a Conduit Trust, to a chronically ill or disabled beneficiary then the Life Expectancy Rule is used to calculate required minimum distributions.

Additionally, an Accumulation Trust for a chronically ill or disabled beneficiary will qualify under the Life Expectancy Rule for a payout over the life expectancy of the chronically ill or disabled beneficiary, as long as he or she is the sole lifetime beneficiary of the trust.

This is the only situation in which an Accumulation Trust can qualify for the Life Expectancy Rule.

Further, if an IRA/Plan is made payable to a trust that subsequently divides into separate trusts for the sole lifetime benefit of a chronically ill or disabled beneficiary, then the Life Expectancy Rule will also apply.

For example, if the IRA was made payable to a trust that subsequently divided into two trusts, one for the sole benefit of the surviving spouse, and the other trust for the sole benefit of a chronically ill beneficiary, then the trust for the surviving spouse, regardless of whether it is a Conduit or Accumulation Trust, would be subject to the 10-Year Rule; however the trust for the benefit of the chronically ill beneficiary could qualify for the Life Expectancy Rule.

e. <u>When a Non-Spouse Not More Than Ten Years Younger than the Plan Participant is a Beneficiary</u>

The final exception to the 10-Year Rule applies when a non-spouse individual who is not more than 10 years younger than the Plan Participant is the sole beneficiary of the IRA. In this case, the Life Expectancy Rule can be used if the IRA is made payable to such beneficiary directly or through a Conduit Trust.

This exception does not apply when the IRA is made payable to an Accumulation Trust for the benefit of such Individual, and the 10-Year Rule will apply instead.

As discussed above, if the Plan Participant died after the Required Beginning Date (meaning that Required Minimum Distributions were required prior to the Plan Participant's death), then the beneficiary or Trustee of the Conduit Trust can elect to continue taking required minimum distributions based upon the life expectancy of the deceased Plan Participant, which would be beneficial in cases where the beneficiary is older than the Plan Participant.

In addition to the above, other alternatives exist under these planning scenarios, and are worthy of consideration.

1. When an IRA or Pension Account is Payable to a Properly Drafted Charitable Remainder Trust.

While the taxation and advantage of using a charitable remainder trust as the beneficiary of an IRA/Plan is not specifically provided for under the SECURE Act, the tax law is very clear that an IRA/Plan passing by beneficiary designation to a properly drafted and administered charitable remainder trust will not cause imposition of income tax on such distributions unless or until distributions are made by the charitable remainder trust, which can paid out over the life expectancy of the individual charitable remainder trust beneficiary or over a fixed period of years not to exceed 20 years. A taxpayer would choose their life expectancy to base the charitable remainder trust term on if the beneficiary is reasonably expected to live at least 20 years.

A charitable remainder trust does not pay income taxes for the items of income it holds onto; income tax liability is only incurred if income is distributed to the non-charitable beneficiary. Thus, the IRA distribution amounts can be contributed to a charitable remainder trust over the 10-year required distribution period, and the charitable remainder trust will not have to pay income taxes on the assets that it continues to hold. This allows the charitable remainder trust to earn and accumulate income without paying taxes on such income until the distributions are made to the lifetime non-charitable beneficiary.

At least 10% of the charitable remainder trust assets must be projected to go to the ultimate charitable beneficiary based upon the life expectancy tables as described under Section 7520. These are referred to as the 2000 CM Mortality Tables, which likely understate the life expectancy for the non-charitable beneficiary because these numbers were compiled based upon data from the year 2000. As medical technology continues to improve, the life expectancy of individuals, especially for those who have the means to consider a charitable remainder trust for their IRA, will hopefully continue to rise. Thus, it is likely that the charitable remainder trust will continue to pay the non-charitable lifetime beneficiary for a period of time that is in excess of what the life expectancy tables would project, resulting in more value going to the non-charitable beneficiary and less going to the charity.

This plan can work out very well for IRA owners who are somewhat charitable minded and would like their beneficiaries to receive their IRA over an extended period of time to avoid and delay income tax liability.

It may work well to create a 20-year charitable remainder trust for a spouse that has less than a 20-year life expectancy in order to provide greater benefits for the original plan owner's children. In such an event, the charitable remainder trust can continue to grow assets tax free and make distributions to the original plan owner's children after the spouse passes.

Otherwise, the payout percentages to a surviving spouse who is age 80 would be 5.35% that year, increasing each year thereafter, whereas under a 20 year Charitable Remainder Trust the percentage would be 4.902% per year for 20 years, with the remainder passing to a family foundation that can be managed by and pay reasonable compensation to family members. The Charitable Remainder Trust numbers assume the use of the January 2020 Section 7520 rate of 2.0%.

Taxpayers need to consider a number of factors when determining if a Charitable Remainder Trust would achieve their desired estate planning goals and taxpayers should consult a tax attorney to help them navigate the available options.

A very good recent article describing charitable remainder trusts and their utility as an income tax savings vehicle was published in Bloomberg's BNA Estates, Gifts and Trusts (EGT) Journal by Jerome N. Hesch and Stephen M. Brietstone entitled Using Charitable Remainder Trusts to Defer Reporting the Gain Realized from the Sale of Marketable Securities for Cash.

2. Spousal Accumulation Agreements.

An alternative to a Spousal Accumulation Trust or Conduit Trust will be a legally binding agreement between spouses, with children and other descendants as third party beneficiaries, which requires the surviving spouse to only withdraw the required minimum distribution amounts each year from a rollover IRA, to invest based upon whatever guidelines and limitations may be set forth in the Agreement, and to provide for the IRA to be inherited by the descendants of the first dying spouse, or trusts for their benefit, in the manner set forth under the Agreement.

This should preserve the surviving spouse's ability to take distributions out in the most tax efficient manner, to have state law creditor protection for the IRA and distributions from the IRA to the extent applicable, and to follow the

wishes of the first dying spouse, while having the benefit of use of the IRA to the extent permitted under the Agreement, and such other assets, whether inherited in trust or outright, as may be left for the surviving spouse.

One question is how the descendants of the first dying spouse or other beneficiaries will enforce such an agreement if they cannot reach the IRA or other assets that are creditor exempt if they get a judgment against the surviving spouse. Such agreement will nevertheless be enforceable against other assets that the surviving spouse might not want to lose by violating the agreement, or may provide that the spouse is considered to be holding the IRA as "trustee" of a constructive trust for state law remedy purposes, so that an equitable lien might be given to the descendants if the agreement is violated. Also, equitable relief may be permitted under the agreement, if enforceable under state law.

In states that have complete creditor protection for IRAs and payments made from IRAs, the spouse will be safer under an Accumulation Trust than under a Conduit Trust, where distributions received from the trustee will not be protected from creditors. In most states that protect IRAs, payments received, as well as other creditor exempt assets purchased with payments received are completely protected from creditors.

At one time, it was unclear whether IRAs would be protected under the federal exemption provisions of the bankruptcy code because IRAs are not ERISA plans. The United States Supreme Court provided that federal bankruptcy law will not protect inherited IRAs for those residing in states that do not have state exemption statutes for IRAs through its decision in the Clark v. Rameker case.1

For individuals who live in states that do not provide creditor protection for IRA accounts, such protection will still apply if the individual files bankruptcy to the extent that the balance of the IRA does not exceed $1,362,800 as of 2020, for traditional IRAs and Roth IRAs funded by the IRA owner. Some states provided for added levels of creditor protection for IRAs, such as Florida, which does not allow a judgment creditor to recovery against IRA or inherited IRA accounts.

Pursuant to Bankruptcy Code Section 522(n), when the Federal exemptions apply, assets held in traditional IRA and Roth accounts are exempt from creditors and thus not part of the bankruptcy estate; however, assets attributable to amounts rolled over from the IRA/Plan are not exempt and will not be included in the $1,362,800 limit. For this reason, clients are well advised not to mix contributory IRAs with other IRAs that come from spousal rollovers or pension plans so that it is clear which account the $1,362,800 limitation applies to.

The IRA will no longer receive protection from creditors in the event that the IRA owner enters into a prohibited transaction with the IRA, or does not comply with the IRA rules. The case, In re Yerian2, provides an example of this where a taxpayer engaged in self-dealing transactions prohibited by the IRA's governing documents by titling IRA-owned cars into his own and his wife's name. He also purchased a condo with IRA funds. The Florida court held that these actions resulted in loss of the creditor protection status of the IRA.

Prohibited transactions include the following:

1. The provision of goods, facilities, or services between a plan and a disqualified person;

2. Lending money from a plan to a disqualified person;

3. The sale, exchange, or lease of any property between a disqualified person and a plan; and

4. Transferring assets from the plan to a disqualified person.

As the result of the above, many planners should add the IRA Accumulation Agreement to their estate planning repertoire, assuming that there will not be a concern that the IRS will see the arrangement as a pseudo Accumulation Trust and attempt to require a distribution at the end of the 10th year.

The Agreement can require the appointment of a fiduciary to ascertain whether the 10-Year Rule would apply in such arrangement, and might require a distribution in the 10th year if this appears to be the case, which the authors believe would be unlikely.

3. <u>The IRA Trust.</u>

An IRA Trust is a trust that can be the beneficiary of an IRA or pension plan, and will have a trust company as the trustee. An IRA Trust can use the Conduit or Accumulation Trust rules as selected by the trustee, without having to have language in the Trust Agreement that is otherwise required for a Conduit Trust or an Accumulation Trust, and the trust company can select which alternative to use on or before September 30th of the calendar year following the death of the Plan Participant.

4. <u>Disclaimer Planning.</u>

This gives much more flexibility to the family and advisors.

On the other hand, disclaimer claiming can also be useful. For example, many clients will name the surviving spouse as the beneficiary of an IRA or pension account, with the alternate beneficiary being a Conduit Trust under provisions that would allow the trustee of the Conduit Trust to amend the trust to become an Accumulation Trust, or to disclaim the distribution with the alternate beneficiary being an Accumulation Trust. The trustee of the Accumulation Trust may have the right to disclaim the benefit so that it would pass to trusts for the descendants, and the trustees of the trusts for the descendants may have the right to disclaim the benefit to go to a public charity or a private foundation that might be formed by the family, and managed by family members who may receive reasonable compensation for charitable activities, and maintaining the investments of the foundation.

Please note that disclaimer planning will only work if the alternate beneficiary that eventually does not disclaim is an appropriate individual, individuals, a Conduit Trust, or an Accumulation Trust, and that beneficiary designations cannot be changed after the death of the Plan Participant.

5. Outright Distributions to Charity.

A good many taxpayers who are charitably inclined will take a look at these new rules and simply decide that it is better to have IRAs be payable directly to charity than to have them be subject to a 10-Year Rule. As many clients get older and wealthier, and as their children also get older and become more and more self-sufficient, they may determine that there is less need for family support (and paying large taxes to the IRS), and more room to make charitable donations.

An IRA or pension account can be payable to a Revocable Trust, with the trustee being required or having discretion to make distributions to charity. This will carry all of the income from the IRA or pension account withdrawal to the charity in the amount that the charity receives. If the estate would otherwise be subject to federal estate tax, this is a double win.

It is important to note that a pecuniary (fixed dollar amount) devise to charity will trigger income tax on Kenan gain, and that a disposition that passes through an estate will also be subject to income tax, and the estate will not receive an equivalent tax deduction.

All of the above charitable implications are generally unaltered by the new SECURE Act, and covered in Chapter 5 of our book entitled *Planning for Ownership and Inheritance of Pension and IRA Accounts and Benefits in Trust or Otherwise.*

Conclusion

New planning opportunities exist despite the Life Expectancy Rule not being applicable where an IRA is left to an individual who is not an Eligible Designated Beneficiary.

Namely, there is no longer a need to restrict certain trust beneficiaries from being able to benefit from trusts that are the beneficiaries of IRA assets because of the ages of such beneficiaries. The age of a trust beneficiary is not relevant in determining the applicable required minimum distribution payout where an IRA/Plan is left to a trust on the death of a Plan Participant. The 10-Year Rule will apply regardless of the beneficiaries' ages, so long as the trust qualifies as a See-Through Trust.

Besides the above five primary alternatives, and as mentioned in the beginning of this article, the surviving spouse or applicable trustees that will manage trusts for benefit of the surviving spouse may choose to disclaim benefits so that they can pass to or under trusts for descendants or other family members.

"You never fail until you stop trying." Albert Einstein

Lawyers should continue to draft documents that provide surviving spouses with the flexibility to choose whether to accept roll overs, if the Grantor wishes to allow a roll over or outright distribution, or to disclaim into a Conduit Trust, which might be reshaped into an Accumulation Trust, or whereby the trustee of the Conduit or accumulation trust may in turn disclaim or have the spouse disclaim the spouse's interest so that it becomes a Conduit or Accumulation Trust for descendants or other non-spouse beneficiaries.

"The important thing is to not stop questioning. Curiosity has its own reason for existing." Albert Einstein

Natalie Choate's Abbreviations:

DB	Designated Beneficiary
DNI	Distributable Net Income
DOL	Department of Labor
DQP	Disqualified Person
ERISA IRD	Employee Retirement Income Security Act of 1974 Income in Respect of a Decedent
IRS	Internal Revenue Service
IRT	Individual Retirement Trust (trusteed IRA)
MAGI	Modified Adjusted Gross Income
MRD	Minimum Required Distribution
PLR	IRS Private Letter Ruling
PPA '06	The Pension Protection Act of 2006
Prop. Reg	Proposed Treasury Regulation
PT	Prohibited Transaction
QRP	Qualified Retirement Plan
RBD	Required Beginning Date
REA	Retirement Equity Act of 1984
TSITAH	This Stuff Is Tough As Heck
UBTI	Unrelated Business Taxable Income

CITATIONS:

i With the assistance of Ian McClean and Wesley Dickson.

ii The Twin TEA POT Trust System℠ is a Service Mark owned by Gassman, Crotty & Denicolo, P.A.

iii This one was not actually said by Albert Einstein.

1*Clark v. Rameker*, 134 S.Ct. 2242 (2014).

2*Yerian* v. *Webber* (*In re Yerian*), 927 F.3d 1223, 1225 (11th Cir. 2019).

Feeling InSECURE with Estate Planning for Your Large IRA? Consider the "TEA POT" Trust System, Unless Paying Taxes Is Your Cup of Tea

Employee Benefits and Retirement Planning Newsletter #716 (January 7, 2020) at http://www.leimbergservices.com, Copyright 2020 Leimberg Information Services, Inc. (LISI).

By: Alan S. Gassman, Christopher J. Denicolo & Brandon Ketron

EXECUTIVE SUMMARY:

New tax laws create new opportunities for estate and tax planners to optimize the economic results for their clients, using both time tested and newly adapted structures.

The SECURE Act provides us with less complexity in the long run, but also has increased and accelerated the potential income taxes that are associated with required distributions from IRA and other qualified required plansii after the death of the IRA owner or retirement plan participant.iii Specifically, "stretch" payouts over the life expectancies of non-spouse adult beneficiaries who are not disabled, chronically ill, or less than 10 years younger than the deceased Plan Participant have been eliminated. Instead, all assets must be distributed from the IRA/Plan within a usually appreciably shorter timeframe (generally no longer than approximately 10 years after the death of the Plan Participant), and such distributions typically are treated as ordinary income subject to income tax. This can result in a significant departure from the income tax deferral afforded by the "stretch" that was available under prior law.

While qualified advisors can take an educated guess as to how to allocate IRAs/Plans among multiple trusts for multiple adult children and their descendants in a tax efficient manner, it is almost certain that such an estimate will miss the mark by a significant degree, given the changes in circumstances, tax law and family objectives, that can change considerably over the course of a decade.

In light of these potential cumbersome challenges, an alternative is for the Plan Participant to leave an IRA/Plan to a single pot trust and to give the trustee thereof the discretionary authority to sprinkle income among the Plan Participant's children and other descendants, while allowing the trustee to conduct an annual strategic review of beneficiaries and their tax situations to determine if and when to make distributions that will carry taxable income out so that the net tax result is optimized. The trust will be drafted as an "Accumulation Trust," meaning that all assets must be distributed from the IRA/Plan no later than December 31st of the 10th year following the year of the Plan Participant's death, although the trustee is not required to distribute any assets from the trust to the trust beneficiaries.

The pot trust structure allows for tax efficient allocation of IRA/Plan assets between the trust beneficiaries; hence its name- the "Twin Tax Efficient Accumulation POT Trust℠," or the "TEA POT Trust."

FACTS:

"Take some more tea" the March Hare said to Alice, very earnestly.

The SECURE Act became law on December 20, 2019, and has drastically changed planning for qualified retirement plans. Effective January 1, 2020, the SECURE Act requires the vast majority of IRAs/Plans that are inherited by individuals or trusts, other than by a surviving spouse or certain other qualifying beneficiaries in limited circumstances (or in a special type of trust for the benefit of any such beneficiaries), to be paid out by no later than December 31st of the 10th year following the calendar year of the Plan Participant's death. This rule is referred to as the "10-Year Rule."

Under the previous law, IRAs/Plans that were inherited by individuals or properly drafted "See-Through Trusts" for individuals could be paid out over the life expectancy of the individual (in the case of an individual being the direct beneficiary of the IRA/Plan), or over the life expectancy of the oldest beneficiary of the trust who could receive benefits from IRA/Plan (in the case where the trust is a beneficiary). An IRA/Plan that can be paid out over the life expectancy of a

beneficiary is known as a “Stretch IRA.” However, for most beneficiaries, the Stretch IRA has been eliminated. The effects of this change are drastic.

For example, as discussed in the authors’ Employee Benefits and Retirement Planning Newsletter #715 (January 6, 2020), if a 50-year-old non-spouse beneficiary who is the Designated Beneficiary of a $1,000,000 IRA with assets that grow at a 6% annual rate of return, and if the beneficiary is in the 37% income tax bracket, and will reinvest amounts distributed at a 5% after-tax rate of return, then the loss of life expectancy deferral will result in a $470,492 difference in the amount of total assets remaining after taxes 10 years after the death of the Plan Participant, assuming that the 10-Year Rule applies. The difference is $594,905 after 20 years and $470,810 after 30 years.

This is a very large difference.

The growth in value inside an IRA/Plan over a number of years will cause a significant advantage for a lifetime payout beneficiary that simply is not available under the SECURE Act.

There are exceptions under the SECURE Act for IRAs/Plans that are left directly to, or to a special type of trust for the Plan Participant’s surviving spouse, the Plan Participant’s minor children, beneficiaries who are chronically ill or disabled, and beneficiaries who are no more than ten years younger than the deceased Plan Participant (these beneficiaries are known as “Eligible Designated Beneficiaries”), but these exceptions will not help the vast majority of individuals who will inherit IRAs left by their parents, aunts, uncles or others.iv However, under the SECURE Act, the Stretch IRA treatment expires upon the death of an Eligible Designated Beneficiary, or upon a minor child reaching the age of majority, and all assets must be distributed out of the IRA/Plan by December 31st of the year that is 10 years after the event causing expiration of the Stretch IRA treatment. This can lead to undesired results, despit e the initial attractiveness of the availability of the Stretch IRA treatment.

What’s more, the Stretch IRA treatment generally applies only where an IRA/Plan is left directly to an Eligible Designated Beneficiary or to a “Conduit Trust” for an Eligible Designated Beneficiary (which must require that all distributions from the IRA/Plan be paid directly to the Eligible Designated Beneficiary). Therefore, leaving an IRA/Plan to or for the benefit of an Eligible Designated Beneficiary in a manner that will qualify for Stretch IRA treatment comes at the cost of severely compromising the asset preservation and creditor protection benefits that result from leaving an IRA/Plan to a protective trust structure for the Plan Participant’s desired beneficiaries.

COMMENT:

For most married clients, a common approach is for the Plan Participant to leave IRA/Plans to his or her surviving spouse. This will enable the surviving spouse to roll over all or any portion of the inherited IRA/Plan into the spouse’s own IRA. The surviving spouse then will be treated as if he or she were the original Plan Participant of the rolled over IRA, which allows the surviving spouse to delay required distributions from the IRA until after he or she has reached the age of 72, and to take required minimum distributions over the more favorable “Uniform Life” distribution table. It also allows the surviving spouse to select the beneficiary who will inherit the IRA upon his or her later death.

In a second marriage situation or other circumstances where the Plan Participant wants the surviving spouse to have the lifetime benefit of an IRA/Plan, but not the ability to choose the beneficiary thereof after the spouse’s death, a Conduit Trust for the lifetime benefit of the surviving spouse might be the (relatively) optimal recipient of the Plan Participant’s IRA/Plan upon his or her death. The Conduit Trust can be drafted to provide for the IRA/Plan to be held in the Trust for the Plan Participant’s desired secondary beneficiaries after the spouse’s death, but the 10-Year Rule will apply after the surviving spouse’s death to require that all assets be distributed from the IRA/Plan.

When an unmarried Plan Participant dies and has multiple descendants, or the Plan Participant’s surviving spouse dies and the IRA/Plan had been held under a Conduit Trust for the spouse’s lifetime benefit, the typical distribution and division will be for equal shares set aside for each child, or for separate equal trusts to be funded for each child. Normally, these trusts are drafted so that the child can be the trustee or a co-trustee, and the child and his or her descendants can receive distributions as reasonably needed for their health, education, maintenance, or support, although no distributions are required to be made from the trusts. Such trusts should be drafted to qualify as Accumulation Trusts to avoid the having the otherwise default “5-Year Rule” (whereby all assets must be distributed from IRA/Plan by December 31st of the 5th calendar year following the Plan Participant’s death) from applying. Whil e the Treasury Regulations will need to clarify this issue, it appears to the authors that the At Least As Rapidly Rule will continue to be available to beneficiaries of an IRA/Plan where the Plan Participant has died after reaching his or her required beginning date.v

Under the SECURE Act, IRAs/Plans that are left to such Accumulation Trusts will be subject to the 10-Year Rule whereby all assets must be distributed from IRA/Plan by December 31st of the 10th calendar year following the Plan Participant’s death (or from the surviving spouse’s death if the IRA/Plan was payable to a Conduit Trust for his or her benefit upon the original Plan Participant’s death). Nevertheless, income tax planning opportunities exist to mitigate the effect of the 10-Year Rule.

“The best way to explain it is to do it.”

Most affluent families who have large IRAs also have children who are well-educated and are in the upper income tax brackets, but this is not always the case. For example, an individual with a $900,000 traditional IRA and $3,000,000 of other assets may have one adult child who is in the 40% combined federal and state tax brackets (“Chrys Chamomile”), another adult child in the 25% combined federal and state tax brackets (“Earl Grey”), and a third adult child in the 10% combined federal and state tax brackets (“Chai Green”).

If trusts for the three adult children each receive $300,000 in IRA benefits that have to be paid out within 10 years of the death of the surviving parent, then the taxes that might have to be paid by each respective trust would be $120,000 by Chrys Chamomile ($300,000 x 40%), $75,000 by Earl Grey ($300,000 x 25%), and $30,000 by Chai Green ($300,000 x 10%).

It would make sense to leave the IRA to the trust for Chai Green, and other assets to the trusts for the other children in larger proportions to counterbalance the negative effect of income taxes on the IRA/Plan assets as the required distributions are made, in order to cause greater tax efficiency. However, it will be hard to estimate how much in extra assets to give to the other two children to take into account that Chai Green may have to pay significant income taxes on $900,000, plus growth, coming out of an IRA over 10 years. Additionally, circumstances might change. Chrys Chamomile may become disabled for one or two years and have deductible nursing expenses that would enable him or her to receive $100,000 a year from an IRA tax-free.

Twinkle twinkle little bat!

How I wonder where you’re at!

Up above the world you fly

Like a tea tray in the sky.

(- the Mad Hatter)

For these reasons, and for this situation, the Twin TEA POT Trust System℠ makes good sense. In the above example, all $900,000 of the IRAs can be made payable to one Accumulation Trust, which can be the beneficiary of one or more IRAs/Plans until the tax year after date on which the 10-Year Rule mandates full distribution of all assets from the IRA/Plan. Such time period is referred to as the “Allocation Period” for the purposes of this Newsletter. During the approximately 10-Year Period, the trustee of that trust can sprinkle the distributions received among the children and their respective family members as the trustee deems appropriate, taking need and tax brackets into account.

This is why we believe that a “TEA POT Trust” serving solely as the “Stretch Trust” beneficiary of IRAs/Plans can provide advantageous income tax results, and that having a non-IRA, non-pension “Equalization Trust” set aside will enable the Trustees to make distributions to or for the benefit of one or more of the descendants or trusts for their benefit to “even things up” during or after the Allocation Period.

Obviously, the distributions received by this trust will be expended on some descendants to a greater extent than others. For example, annual payments can be made to Chai Green to make use of the lower brackets each year, as opposed to waiting to give him, or a trust for his benefit, all $900,000 worth, plus growth, in the 10th year.

Further, Chrys Chamomile might have a child of her own, Mushroom Brew, who is disabled and has significant deductible medical and personal care expenses. It can make good tax sense for the monies to be spent for low income grandchildren to the extent that they may not be subject to the Kiddie Tax[vi].

In order to keep things fair and equitable, a separate “Equalization Trust” can be established as part of the TEA POT Trust System, which can be held until the expiration of the Allocation Period to provide benefits to the family members who do not receive a “fair share” of the benefit from the TEA POT Trust due to IRA/Plan assets having been allocated to other family members.

In our example, the TEA POT Trust would receive all rights to the $900,000 in IRA accounts, and the Equalization Trust would receive $1,500,000 worth of other assets. This would leave $1,500,000 worth of assets that would be divided into three under the surviving parent’s revocable trust shortly after such parent’s death, so that the trust for each separate child would receive $500,000 in assets. Over the course of the approximately 10-year Allocation Period following the surviving parent’s death (but no later than the expiration of the Allocation Period), each child’s trust will receive the child’s one-third share of the total $2,400,000, which can equate to at least $800,000 plus growth (net of taxes).

A competent CPA who understands income taxes for individuals and trusts can be retained by the trustee of the TEA POT Trust, and can advise each year on whether to take a distribution, and how to distribute the distribution to most effectively reduce income tax and enhance the inheritance of all beneficiaries.

The TEA POT Trust and the Equalization Trust can be managed by all of the children, along with a professional or corporate trustee, if desired, and someone from outside of the family, like a long-term lawyer, CPA, or other advisor or close friend can serve to act as the “tie-breaker” in order to help determine how the Equalization Trust is distributed. Alternatively, a CPA firm could be named and given the task to determine what the after-tax impact of the TEA POT Trust has been, and to calculate how much of the Equalization Trust should be distributed to the trusts for the separate children in order to facilitate after-tax sharing in the most equitable manner.

Most tax and estate planners are well aware that a separately taxed “complex trust” measures its taxable income in a manner very similar to what applies to individuals, but that distributions made during a tax year, as well as distributions made within 65 days of the end of the tax year that the trustee elects to have considered as having been distributed in the previous year.

As discussed in the authors’ LISI Employee Benefits and Retirement Planning Newsletter #715 (January 6, 2020), there is a question of whether the IRS will consider the TEA POT Trust and the Equalization Trust to be considered as one trust for federal income tax purposes.

Because of this, it will be safest to not make distributions from the Equalization Trust in the same calendar year that distributions are made from the TEA POT Trust, so that the IRS does not treat the income as coming pro rata from each trust to the recipient beneficiaries. Some families will distribute from the TEA POT only for the first ten years, and then from the Equalization Trust, while others may alternate years – year 1 from the TEA POT Trust, year 2 from the Equalization Trust, etc.

With reference to if and when two or more trusts will be considered to be a single trust, under IRC Section 643(f) and Treasury Regulation Section
1.643(f), two or more trusts will be treated as one trust if they have all three of the following:

(1) substantially the same grantor, with married couples being considered as one grantor, even if they each separately establish a separate trust;

(2) substantially the same primary beneficiaries, and

(3) a principal purpose of such trust is the avoidance of income tax.

Under the prior law, “shadow trusts” have been commonly used for the purpose of being the beneficiary of IRAs/Plans after the death of the Plan Participant, so that the rules and limitations required to qualify the trust as a “See Through Trust”, are complied with. This may provide sufficient justification to establish a multiple trust arrangement for reasons other than to avoid income tax. Further, it may be sufficient if each trust has different provisions regarding the distribution of income or principal, and one trust provides for the possibility of distributions being made to beneficiaries who are not beneficiaries of the other trust. For example, the Equalization Trust could permit the trustee thereof to make distributions of non-IRA Plan assets to charitable organizations.

A separate TEA CUP Trust could be established from the IRA accounts otherwise intended for the TEA POT Trust if there is a chronically ill or disabled beneficiary who is intended to receive IRA/Plan assets. The TEA CUP Trust can be structured as an Accumulation Trust for the benefit of such chronically ill or disabled beneficiary, and the TEA CUP Trust should be entitled to Stretch IRA treatment with respect to required minimum distributions payable over the lifetime of the chronically ill or disabled beneficiary. This is because a chronically ill or disabled beneficiary is an eligible designated beneficiary to which the Stretch IRA treatment applies, and a special exception unique to chronically ill or disabled beneficiaries allows for Stretch IRA treatment to apply even if the IRA/Plan is made payable to an Accumulation Trust for the benefit of the chronically ill or disabled beneficiary and such separate Accumulation Trust is divided from a larger trust after the death of the Plan Participant.

It is noteworthy that an Accumulation Trust established for a minor must be directly funded to qualify for the use of the minor’s life expectancy through the age of majority, so it does not appear that a TEA POT Trust can share its assets to fund a TEA CUP Trust under the new law.

In addition, the family may have charitable intentions, and the TEA POT Trust can allow the trustee to make distributions from the IRAs/Plans accounts directly to charity provided that no such distributions may be made to any charity or other non-individual after September 30 of the of the calendar year following the year of the death of the Plan Participant. The September 30 deadline serves to help assure that the Trust will qualify as an Accumulation Trust, as only individuals can be beneficiaries of an Accumulation Trust after such September 30. This means that the family may huddle shortly after the Plan Participant’s death to determine how much or what to give to charity, and which beneficiaries will have their inheritance trusts reduced to take this into consideration.

While we recommend that neither of the TEA POT Trusts have any disposition to charity after the September 30 of the year following death date, it seems that the tax law will permit the Equalization Trust to invest its assets in an entity taxed as a partnership, and to receive ownership in the partnership in exchange for such investment. The partnership can make

charitable contributions, and can receive an income tax charitable deduction that is passed through to its partners (including the Equalization Trust) on Forms K-1. It might be possible for the TEA POT Trust to be a partner in the partnership as well, but the IRS may argue that the charitable recipients of the partnership's charitable contributions are considered to be beneficiaries of the Trust, which would cause detrimental effects to the TEA POT Trust's ability to qualify as an Accumulation Trust.

The TEA POT Trust has other advantages besides tax savings and flexibility, namely:

> 1. The TEA POT Trust will relieve the children and their respective trustees from having to work with smaller ($300,000 each in our example) IRA stretch trusts that will need to be separate and apart from their other lifetime benefit trusts in order to have the 10-Year distribution deferral period apply, and to avoid the expenses and possible mistakes associated with the administration and maintenance thereof.
>
> 2. The TEA POT Trust keeps the children together with respect to
> the management and distribution thereof, as opposed to each child going their own separate way from an investment decision-making, management and interpersonal standpoint. Further, the Trust can require that each child attend an annual meeting, and that competent advisors be hired and used.
>
> The most adept and conscientious child or children will hopefully set a good example and "rub off" on the less adept and less attentive child or children, which may influence everyone to do a better job in being a trustee or co-trustee for their own trusts. Additionally, an advantage to not having separate trusts is that one child may have little or no appreciation for the need of staying in touch and requesting assistance from competent tax and legal advisors.
>
> 3. As stated above, the TEA POT Trust can provide the creditor protection and asset preservation benefits afforded by a spendthrift trust that does not require compulsory distributions therefrom. This is perhaps the most significant advantage of the TEA POT Trust relative to the IRA/Plan being left directly to a child or to a Conduit Trust for the child.
>
> 4. Having the children receive additional distributions after the Allocation Period can help assure that the trusts for the children and subsequent generations are not inadvertently exhausted.
>
> 5. The TEA POT Trust will be more flexible, if there are law changes in the future, because of the special language that can be provided in the trust agreement to facilitate this.

Conclusion

Try a Little TEA POT, short and stout,

To pay less tax from distributions, so that the beneficiaries don't pout.

Explain that it is a tax savings vehicle of choice.

And that interaction with tax advisors

To give tax advisors and good management a solid voice.

Let us know whether you agree

That for many clients this will be the right cup of tea.

The Twin TEA POT Trust System℠ will be discussed in greater detail on the authors' upcoming LISI Webinar on Thursday, January 9, 2020, entitled "Practical Estate and Trust Planning After the Secure Act- Including Sample Provisions, Checklists and Client Explanation Letters."

"But what happens when you come to the beginning again?" Alice ventured to ask.

"Suppose we change the subject", the March Hare interrupted, yawning.

CITATIONS:

i Alice's Adventures in Wonderland. The authors are curious as to what kind of tea Louis Carroll was drinking when he wrote this incredible book, notably including Chapter 7 – A Mad Tea-Party.

ii For the purposes of this Newsletter, the authors are referring to the term "IRA/Plan" to signify IRAs and other qualified retirement plans, including IRAs, SIMPLE IRAs, Simplified Employee Pensions (SEP), Employer sponsored retirement plans (such as 401(k) plans, defined benefit plans, defined contribution plans, and profit sharing plans), 403(b) Plans, 457(b) Plans, Roth 401(k) Plans, and Roth IRAs (however, Roth IRAs are not subject to the Required Minimum

Distribution rules until the owner of the Roth IRA (or the spouse of the deceased owner who rolled over into his or her own Roth IRA) dies), Canadian Registered Retirement Savings Plans (RRSPs) and Registered Retirement Income Plans (RRIFs) (to the extent that such retirement plans are treated as USA IRA equivalents).

iii For the purposes of this Newsletter, the term “Plan Participant” means the person who is the IRA owner or qualified retirement plan participant, while alive, or after death.

iv For a great summary of the changes to qualified retirement plans brought about by the SECURE Act, see Employee Benefits and Retirement Planning Newsletter #713 written by Natalie Choate.

v Under prior law, if a Plan Participant died after reaching his or her required beginning date, then the beneficiaries would be entitled to choose whether the “At Least As Rapidly Rule” applied to cause required minimum distributions to be payable over the deceased Plan Participant’s life expectancy, based upon the single life table, without annual recalculation. There is some question as to whether this “At Least As Rapidly Rule” continues to apply where an IRA/Plan is left to an individual designated
beneficiary or to a trust that qualifies as a See-Through Trust (i.e. a Conduit Trust or an Accumulation Trust).

Treasury Regulation §1.401(a)(9)-5, Q&A-5 references the longer of: (i) the life expectancy of the designated beneficiary (which no longer applies under the SECURE Act unless the beneficiary is an eligible designated beneficiary); or (ii) the deceased Plan Participant's remaining life expectancy, regarding the determination of the distribution period if the Plan Participant dies on or after his or her required beginning date.

Nevertheless, it seems that a beneficiary of an IRA/Plan still has the ability to use the At Least As Rapidly Rule if the Plan Participant dies on or after his or her required beginning date because IRC Section 401(a)(9)(B)(i)(II) was not modified by the SECURE Act to modify or remove the “At Least As Rapidly Rule,” and nothing in the revised statute indicates that the 10-Year Rule was intended to eliminate the “At Least As Rapidly Rule” or change the default distribution period applicable where the Plan Participant dies on or after his or her required beginning date.

While IRC Section 401(a)(9)(H)(i)(II) indicates that the 10-Year Rule applies in lieu of the 5-Year Rule where there is a designated beneficiary, regardless of whether the Plan Participant died on or after his or her required beginning date, if Congress intended to remove the at least as rapidly rule, then Section 401(a)(9)(B)(i)(II) would have been modified accordingly. The objective of IRC Section 401(a)(9)(H)(i)(II) appears to be to replace the 5-Year Rule with the 10-Year Rule where a Plan Participant dies and leaves a (non-eligible) designated beneficiary, even if the Plan Participant dies on or after his or her required beginning date.

Further, if this Section is read in conjunction with the post-SECURE Act IRC Section 401(a)(9), it seems that the “longer of” the deceased Plan Participant’s remaining life expectancy, or the distribution period applicable to the designated beneficiary (whether it be the life expectancy rule if the designated beneficiary is an eligible designated beneficiary, or the 10-Year Rule otherwise) will apply if Plan Participant died on or after his or her required beginning date.

The solution is easier if a trust is the beneficiary of the Plan, as the choice can be made by intentionally failing to comply with the requirement that certain documentation be provided to the plan administrator by October 31st of the year after the Plan Participant's death.

It also does not seem that Congress wanted to provide less flexibility for individual designated beneficiaries, rather than for situations where the designated beneficiary is determined under a See-Through Trust or if there is no designated beneficiary, as it is clear that the At Least As Rapidly Rule will apply if there is no designated beneficiary. Additionally, the At Least As Rapidly Rule would not change the distribution period that would apply if the Plan Participant were still living, so the distribution period would not be extended by reason of the Plan Participant's death, which leads to conclusion that it was intended to remain in effect where there is a designated beneficiary of the IRA/Plan.

vi The Kiddie Tax was also changed by the SECURE Act to cause any investment or unearned income of a child under the age of 19 (or a full-time student between the ages of 19 and 23) to be subject to income tax at the tax brackets of the child’s parents, instead of at the tax brackets applicable to complex trusts which applied after the Tax Cuts and Jobs Act of 2017.

A STUDY GUIDE FOR 529 PLANS

By: Ken Crotty

529 Plans have been established by many families to pay for certain educational expenses. Created by the 1996 Small Business and Jobs Protection Act, 529 Plans were used to pay for "qualified educational expenses" associated with post-secondary federally accredited educational institutions. These institutions are schools that accepts federal financial aid and include schools providing vocational, two-year, four-year, and graduate programs. The Tax Cuts and Jobs Act expanded the scope of qualified educational expenses to include up to $10,000 per year of tuition and fees for kindergarten through 12th grade. The SECURE Act has further expanded the definition of qualified education expenses to include costs of apprenticeship programs and some student loan payments.

529 plans are funded with after tax dollars, and the assets of a 529 plan grow without being subject to income tax. Amounts withdrawn from a 529 plan that are used to pay qualified education expenses can be withdrawn tax-free. Funds can also be withdrawn for non-qualified education expenses, however, ordinary income tax will be due on the funds that are withdrawn and a 10% penalty will also be due.

Prior to the SECURE Act, qualified education expenses included tuition, fees, and some expenses for post-secondary institutions and up to $10,000 per year for tuition and fees associated with kindergarten through 12th grade. In addition to tuition and fees, qualified education expenses for post-secondary institutions also included books and supplies, computers, and room and board. Rent for students attending post-secondary institutions who did not live on campus was also considered a qualified education expense provided that 1) the student was enrolled at least half-time, and 2) the amount did not exceed the cost of attendance figure published by the applicable institution.

Before the SECURE Act was passed, the costs of apprenticeship programs were not qualified educational expenses that could be paid from 529 Plans. Now, however, distributions can be made from 529 Plans to pay for apprenticeship programs that provide training for individuals seeking careers in various fields including construction and manufacturing, healthcare, and information technology. For expenses to qualify, the apprenticeship program must be registered and certified with the Secretary of Labor. Individuals enrolled in these programs can now receive qualified distributions from 529 Plans to pay for fees, textbooks, supplies, and equipment.

According to the Department of Labor, 585,000 people were enrolled in apprenticeship programs in 2018, which is a 56% increase from 2013. Over 10,800 new apprenticeship programs were created during that five year period, and an estimated 282,000 people have graduated from apprenticeship programs during that time.

The SECURE Act also allows up to $10,000 to be distributed tax free from a 529 Plan to repay a beneficiary's student loans. Both interest and principal owed on a student loan can be repaid and will be considered to be qualified educational expenses. However, any student loan interest that is paid with a distribution from a 529 plan cannot also be deducted as eligible student loan interest on the individual's income tax return. For 2019, a person repaying student loans could

deduct up to $2,500 of interest that was paid during the year. This deduction is subject to income limitations, however, and was completely phased-out for a single taxpayer making more than $85,000 in 2019.

529 Plans have had a single beneficiary. The beneficiary of a plan can be changed at any time without adverse tax consequences so long as the new beneficiary is a qualifying family member of the prior beneficiary. A qualifying family member includes a beneficiary's spouse; child or stepchild; sibling; son or daughter-in-law; brother or sister-in-law; father or mother-in-law; and aunt, uncle, niece, nephew, first cousin or their spouse.

The SECURE Act allows up to $10,000 to be distributed from a 529 Plan to pay student loan debt of a beneficiary's sibling without having to change the beneficiary of the plan. For example, if a family established one 529 Plan and has four children, then up to $40,000 can be withdrawn to repay student loans. Up to $10,000 can be withdrawn to pay for the beneficiary's student loans, and up to $10,000 can be withdrawn to repay the student loans of each of the beneficiary's siblings.

Many students submit a Free Application for Federal Student Aid (FAFSA) Form. When this Form is submitted, distributions made from 529 Plans for the benefit of the student need to be reported on the Form as untaxed income. The amount of financial aid the student receives can be reduced by up to 50% of the value of the untaxed income reported on the FAFSA Form.

Assets held in a 529 Plan established by a grandparent do not affect the financial aid determination for a grandchild filing a FAFSA Form. However, if a distribution is made from such a 529 Plan, this distribution does need to be reported on the FAFSA Form. As described above, a $10,000 distribution could cause a $5,000 reduction in the student's financial aid. As a result of the SECURE Act, the same $10,000 can be distributed after the beneficiary's student loans have been received to repay the loans without reducing any of the financial aid which may be received as a result of filing the FAFSA Form.

It is important to realize that the above analysis relates to federal law. Not every state has expanded its definition of qualified educational expenses to mirror the federal definition, which may cause tax or penalties to be applicable. For example, New York, Oregon, and Vermont do not consider payments for kindergarten through 12th grade tuition to be a qualified educational expense. Therefore, taxpayers should consult with their advisors to be certain that amounts distributed from 529 Plans will be treated as qualified educational expenses to avoid unexpected income tax issues.

To Be or Notary, That is the Question...

By: Wesley Dickson and Ken Crotty

As the new year began in Florida, so did a number of changes to the notary system. The new rules, which became effective January 1st, eliminate the “in person” requirement for notaries. Florida now allows notarization to happen remotely, joining the ranks of states like Idaho, Texas, and Nevada.

While remote notarization sounds great in theory, there is a bit more to the practice than meets the eye. First, in order for an individual to qualify as a “remote notary,” he or she must complete a 2-hour training course (ironically available both online and in person), post $25,000 as a bond, and have $25,000 of insurance for errors and omissions. Additionally, the notary must also keep an electronic journal, which details all of his/her online notarizations, and must keep a backup record of this electronic journal.

In addition to the added requirements for the notary, the new law also updates the notary block to be consistent with the addition of online notarization. The new form allows for a notary to denote whether they notarized in person, or via the internet and includes a similar section for instruments requiring sworn oaths or affirmations. With the amendment of this language it is important to utilize the most recent forms, as failure to do so may result in the document to be rejected.

With respect to forms requiring the statutory acknowledgment of a principal, the following bold language should be added:
The foregoing instrument was acknowledged before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of __________, ___ (year), by ______________ ....

With respect to instruments that require an affirmation or oath, the following bold language should be added to the certificate: **Sworn to (or affirmed) and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this ____ day of ____________, ___ (year),by _______________ ......**

If documents are signed without this additional language after January 1st, the failure to have this language could result in the document being rejected. It is important to note that this change applies to documents signed after January 1st. A document will not be rejected if it complies with the prior law and was signed on or before December 31, 2019, even if it is recorded after January 1, 2020.

The new law not only paves the way for e-notarization, but also clarifies some issues with e-wills as well. Most importantly, electronic wills may now be signed with an electronic signature.

On January 1st Florida joined a small handful of states that have made efforts to push the traditional form of notarization into the 21st Century. The number of states allowing e-notarization is increasing by the year, with 6 states passing legislation in 2018 alone. It will be exciting to see where technology takes us next, we just hope e-lawyers don’t come along for another couple of decades at least.

NEW YEAR TIP : Don’t abbreviate 2020

Better Business Bureau officials and police are advising people to write out the full year with 2020 now upon us.

Abbreviated versions can be easily altered.

For instance, the date 1/2/20 can be altered to read 1/2/2017 or 1/2/2019 by adding the two digits.

Let’s say there is an Agreement to begin making payments on 1/15/20. Someone could easily alter the document and make a claim that the obligation to begin payment was 1/15/2019 and try to collect additional money.

A check dated 1/20/20 that becomes inactive could become active by writing in 1/20/2021.

When in doubt, write out the full date or make things easy and always do it!

For Finkel's Followers

The 1 Thing You Should Look At When You Feel Overworked

Just the other day I was thinking about a business owner that I had coached several years ago. Since he may read this column, I will call him Terrance (not his real name).

Terrance owned a seasonal hospitality business in southern Utah and worked eighty plus hours a week, every year from May through October.

The rest of the year, he “only” had to put in a light fifty-to sixty-hours a week but come May this jumped to twelve to fourteen hours a day, seven days a week.

Now this schedule was hard enough on Terrance physically, but emotionally it was killing him. Can you imagine – every day he got up and left the house before his kids were awake and didn’t get home until his kids were in bed asleep.

Every day… for six months out of the year… year after year after year…

When I first met Terrance and he told me his story, it broke my heart.

I’m a dad with three young sons myself. I’ve experienced how fast their childhood seems to disappear. There are personal milestones in your kids’ lives that you never rewind. I remember how it used to feel when my older two sons would reach for and hold my hand anywhere, we walked together—into a store, on a trail, or even down the stairs to breakfast.

It was one of the sweetest parts of being a dad for me, the feeling of their tiny hands in mine. Then the day arrived when they were about eight years old, and they stopped reaching for my hand. Just thinking about this makes me want to cry.

Of course, it’s normal and healthy—they’re growing up. But I miss it.

So, when Terrance told me about how for years, he sacrificed baseball games, family meals, and bedtime stories with his four kids to take care of his business responsibilities, I really felt for him.

There is good news at the end of his story, though so stay with me.

While there were many ways that he could have worked on his business (much like in your own) I encouraged him to focus on one single idea, and that idea turned his business and his life around.

Question Everything

I challenged Terrance to question each and every task he did for his business.

- Did he really need to do that report, or could someone else within the company put it together for him to review?
- Did he need to be the one to sign the paychecks?
- Did he need to handle every customer complaint, or could someone on his team be trained to handle it properly?
- Did he need to be there for that sales meeting?

And the list went on and on….

What he quickly realized is that the majority of the tasks on his plate, were there simply because he had failed to create systems and controls and delegate tasks to his team. There was just a handful of tasks that should have been on his to-do list, and those were the items that created the most value for his company.

Focus on Fewer, Better

Once he was able to identify where he should be spending his time, he was then able to really create value while still making time for his family. (Which by the way was only around 20 hours a week in the off-season and 35 during the busy season.) He even took his first ever vacation in the middle of the busy season!

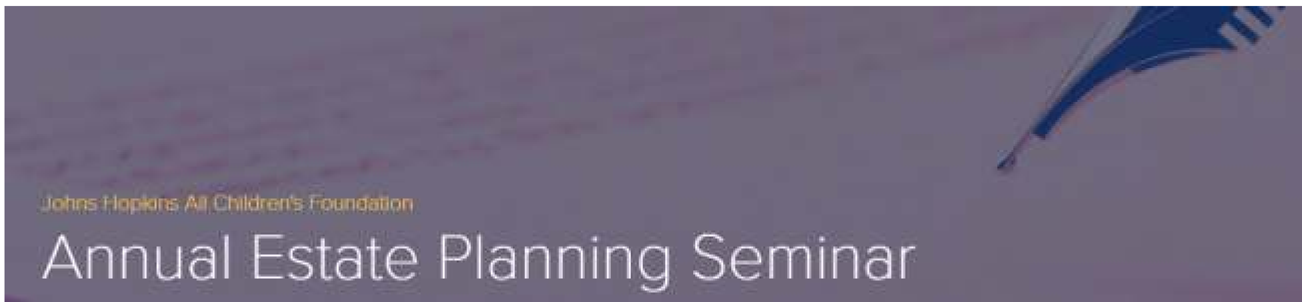
I’m hoping that Terrance’s story sparks, inspires, or shakes you up enough that you start to do this same work on your business. The first step is to fundamentally change the way you structure your day, week, quarter, and business environment so that you can achieve incredible professional success and enjoy even richer personal and whole-life success, too.

Yesterday In History

- 1737: John Hancock, first signer of the United States' Declaration of Independence, was born
- 1961: The United States Supreme Court rules that cities & states have the right to censor films
- 1969: Cream releases their last album "Goodbye". Since then, Eric Clapton has released 7 albums, his latest with Derek and the Dominos.
- 1973: Richard Nixon announces that the Vietnam War has ended
- 1979: Willie Mays is selected into the Baseball Hall of Fame
- 1986: The first induction of the Rock 'N' Roll Hall of Fame was made. Inductees included Chuck Berry, James Brown, Ray Charles, Domino, Everly Bros, Buddy Holly, J L Lewis, and Elvis Presley.
- 2018: Twelve camels are disqualified from the King Abdulaziz Camel beauty contest in Saudi Arabia after it was found that their owners used botox on their lips.
- 2019: KFC unveils limited-edition Colonel Sanders Collectibles and the limited-edition KFC Gravy Candle.

Humor (or lack thereof)

Upcoming Events



REGISTER HERE - https://www.cvent.com/d/lyqrhs/1Q

February 6, 2020
7:45 a.m.- 4:15 p.m.

Attend LIVE

Research and Education Building
Banker's Auditorium
600 5th Street South
St. Petersburg, FL 33701

Attend at a satellite location

8 live-feed viewing locations across Tampa Bay are available for your convenience including St. Petersburg, Tampa, Ft. Myers, Belleair, Pasco, Lakewood Ranch, Downtown Sarasota, and Venice.

Please contact Jenna Felder at 727-767-4199 or achseminar@jhmi.edu with any questions

REGISTER HERE - https://www.cvent.com/d/lyqrhs/1Q

8:40 am - 9:30 am
Current Development in Asset Protection: Building a New Form in Asset Protection Trust *Speaker: Jonathan Blattmachr*
This presentation will discuss a new and likely a more robust form of asset protection trust: the special power of appointment trust or SPAT. It is a trust that, by definition, is not self-settled, meaning that statute "voiding" such trusts for creditor purposes (e.g., New York EPTL 7-3.1) to not apply. Hence, unless a creditor (or the IRS) can establish

9:40 am - 10:30 am
Pre-and Post-Marital Planning for Marriage, Divorce and Asset Protection: Keeping Separate Property *Speaker: Sharon Klein*
Whether counseling clients before, during or after marriage, advisors should be aware of important tools, techniques and other considerations in order to advantageously position their clients in the event of divorce. With the increasing overlap among different professional disciplines, advisors have much to gain from having cross-disciplinary fluency, particularly in light of recent tax law changes. Topics include: • A hidden asset when considering prenuptial planning that could be worth millions to the wealthier spouse, and a powerful negotiating tool for the non-monied spouse; • Asset protection trusts: A potentially powerful premarital option; • "Quiet" Trusts, with the ability to restrict beneficiary access to trust information; • Documents that require immediate review in light of divorce; • Compelling tools that could change otherwise irrevocable trust terms and distributions in the divorce context; • Significance of credit soluti ons in divorce; • Critical considerations

regarding the use of life insurance; • Recent developments regarding stored genetic material; and • Significant latest tax law changes in the divorce context.

10:40 am - 11:30 am
I'm All About That Basis *Speaker: Lester Law*
This presentation will discuss a few different topics related to income tax basis, which include: what estate planners need to know about income tax basis; current tax planning strategies to achieve a "double basis" step-up at death on property owned jointly by spouse; whether assets held in Irrevocable Grantor Trusts can receive a basis adjustment at the death of the grantor; whether a donor can receive a basis adjustment for gift taxes paid for gifts made to irrevocable grantor trusts; basis issues and how to deal with them for residents migrating from community property states; the efficacy and use of Community Property Trusts, and the benefits of the Power of Appointment Support Trust ("POAST").

11:40 am - 12:30 pm
Using Pot Trusts in Estate Planning: Pay Me Now or Pay Me Later *Speaker: Bruce Stone*
Pot trusts are used far more often in trust documents than they should be. Except for credit shelter trusts and trusts for minor children, pot trusts generally are not a good idea. They should require way more attention in drafting that we estate planners give them, and they generate more than their fair share of disputes and litigation. So why do we keep using them? If we can't avoid them, how can we make better use of them?

1:20 pm - 2:10 pm
Post Mortem Tax and Estate Planning *Speaker: Jere Doyle*
Numerous post-death tax and estate planning elections are available to a fiduciary. Advisors need to be aware of all the options available. This program will discuss the following topics: protecting the fiduciary, estate's fiscal year election, administration expense election, alternate valuation election, Section 643(e) election, portability, QTIP election, qualified domestic trusts, disclaimers, death of a partner, S corporation stock, Section 645 election, Section 6166 deferral of estate tax and generation skipping tax elections.

2:20 pm - 3:10 pm
The Year in Review: An Estate Planner's Perspective of Recent Tax Developments *Speaker: Howard Zaritsky*
This is a review of all of the legislation, cases, regulations, revenue rulings, and revenue procedures, and selected private rulings and proposed legislation from the past 12 months in the tax areas that relate to estate planning, including income taxes, estate taxes, gift taxes, and GST taxes.

3:20 pm - 4:10 pm
Income Tax and Estate Tax Planning Techniques You May Not Be Familiar With *Speaker: Jerry Hesch*
Panel Discussion Moderated by Jerry Hesch, Esq. The application of fundamental income tax and estate tax principles in ways frequently ignored to reduce estate tax exposure while at the same time either eliminate potential gain or defer the reporting of the gain. The speakers will build upon topics covered earlier in the day and demonstrate how they can be communicated to a potential client in an understandable manner using simple to follow numerical examples.

Watch Alan explain 678 trusts to his grand daughter at the 2019 event on YouTube - https://www.youtube.com/watch?v=wrMWKRIAOA4

REGISTER HERE - https://www.cvent.com/d/lyqrhs/1Q

Please contact Jenna Felder at 727-767-4199 or achseminar@jhmi.edu with any questions

Recent Updates

Register for the full complimentary Learning at Lunch webinar series

Date	Event	Details	Information
1/30/2020	Learning at Lunch Webinar Series	Alan Gassman presents: *The Biggest Mistakes Physicians Make As Owners and Non-Owners in Medical Practices* from 12:30 PM to 1 PM ET	REGISTER HERE
1/31/2020	ABA Tax Section Meeting in Boca Raton, FL	Alan Gassman participates in a panel discussion: *TCJA - Hot Topics for Closely Held Businesses* from 2:30 to 3:30 PM ET	REGISTER HERE
2/6/2020	Johns Hopkins All Children's 22nd Annual Estate, Tax, Legal & Financial Planning Seminar at multiple viewing locations across Florida	Please consider attending to support this great event	REGISTER HERE
2/6/2020	Learning at Lunch Webinar Series	John Beck presents: *Don't Be Passive: Passive Rental Losses* from 12:30 PM to 1 PM ET (Moderated by Alan Gassman)	REGISTER HERE
2/12/2020 through 2/14/2020	The Florida Tax Institute at Marriott Waterside Tampa in Tampa, FL	Please visit our display table in the Exhibit Hall for a free book	REGISTER HERE
2/13/2020	Learning at Lunch Webinar Series	Alan Gassman presents: *Planning for Florida Dental Practices and Their Owners - Part 2* from 12:30 PM to 1 PM ET	REGISTER HERE
2/13/2020	Leimberg Webinar Services (LISI)	Alan Gassman, Jonathan Blattmachr and Sean Healy present: *NFA Gun Trusts: Keeping Safe At The Range And In The Estate Plan* from 3 PM to 4:30 PM ET	REGISTER HERE

Date	Event	Details	Information
2/14/2020	Leimberg Webinar Services (LISI)	Alan Gassman and Ken Crotty present: *Estate Tax Planning with Family Entities After Powell and Strangi:20/20 Vision after Heckerling 2020* from 3 PM to 4:30 PM ET	REGISTER HERE
2/14/2020	LawEasy Webinar	Alan Gassman and Martin Shenkman present: *Asset Protection for Physicians - Part 1*	More information available soon
2/20/2020	Learning at Lunch Webinar Series	Alan Gassman presents: *Success Tips for First Year Lawyers (and all other professionals) - Part 3* from 12:30 PM to 1 PM ET	REGISTER HERE
2/21/2020	LawEasy Webinar	Alan Gassman and Martin Shenkman present: *Asset Protection for Physicians - Part 2*	More information available soon
3/26/2020	Creative & Personal Mastery For Estate Planners in Tampa, FL	Dinner and evening workshop with Professor Rao and Alan Gassman	REGISTER HERE
3/27/2020	Creative & Personal Mastery For Estate Planners in Tampa, FL	Full day core program led by Professor Rao, followed by dinner with Professor Rao and Alan Gassman	REGISTER HERE
3/28/2020	Creative & Personal Mastery For Estate Planners in Tampa, FL	Breakfast and morning workshop with Alan Gassman, followed by lunch talk by Professor Rao	REGISTER HERE
4/21/2020	Florida Bar Tax Section CLE	Alan Gassman and Leslie Share present: *Advanced Wealth Protection Workshop*	Registration available soon
5/1/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: *Contract Negotiations* from 4 PM to 5 PM ET	MORE INFORMATION
5/7/2020	Estate Planning Council of Northern Nevada Annual May Event in Reno, NV	Alan Gassman presents: *Dynamic Planning with Irrevocable Trusts after TRA* from 7:30 AM to 9 AM PST	REGISTER HERE
5/15/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: *Contract Negotiations* from 4 PM to 5 PM ET	MORE INFORMATION
5/29/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: *Contract Negotiations* from 4 PM to 5 PM ET	MORE INFORMATION

Date	Event	Details	Information
6/5/2020	USF Resident Intern meeting at Tampa General Hospital in Tampa, FL	Alan Gassman presents: *Contract Negotiations* from 4 PM to 5 PM ET	MORE INFORMATION
7/3/2020	Florida Bar Tax Section Workshop at Amelia Island, FL	Alan Gassman presents: *Tax Lawyer Professional Acceleration Workshop* from 8:30 AM to 12:30 PM ET	More information available soon
8/29/2020 through 8/30/2020	46th Annual Notre Dame Tax & Estate Planning Institute	Please consider attending to support this great event	Registration available soon

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

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

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