

SECURE 1.0 / 2.0 Acts – Hot Topics – PART 2

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SECURE 1.0 / 2.0 Acts – Hot Topics – **DISCLAIMERS**

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 Acts ... Hot Topics

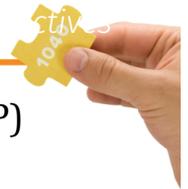
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SECURE 1.0 / 2.0 Acts ... Hot Topics - AGENDA



- IRS Notice 2022-6 – *Substantially Equal Periodic Payments* (SEPP)
- Qualified Charitable Distributions (QCDs)
- Retirement / IRA Distribution Planning ... *Fundamental Concepts*
- SECURE 1.0 Act ... Stretch Distributions ... Before 2020 and After 2019
- SECURE 1.0 Act ... “Beneficiaries” After 2019
- Final RMD Regulation ... July 18, 2024
- Final RMD Regulations ... Trusts as Beneficiaries
- Three (3) IRA / Qualified Plan Rollover Mistakes

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Quote of the Session



“

**RETIREMENT IS NOT
THE END OF THE
ROAD. IT IS THE
BEGINNING OF THE
OPEN HIGHWAY.**

”

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SECURE 1.0 / 2.0 Acts ... Hot Topics ... A Tax Funny ...



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SECURE 1.0 / 2.0 Acts ... Hot Topics ... A Retirement Planning Tax Funny ...



I just signed up for my
Company's IRC §401(k) Plan! I'm
little nervous because I have
never run that far!

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Distribution Planning ... Notice 2022-6



- Background

- In 1989, the IRS provided three safe harbor methods for satisfying the SEPP
- Revenue Ruling 2002-62, allows a one-time allowance to switch distribution methods to an RMD method
- Notice 2014-5, 2014-1 C.B. 526, previous guidance regarding SEPPs
- On January 18, 2022, the IRS updates the longstanding guidance on when a SEPPs avoid the application of [IRC §72\(t\)](#) (addition 10% income tax on the amount distributed)

Distribution Planning ... Notice 2022-6



- Background (Cont.)

- IRC §72(q)(1) and IRC §72(t)(1) provide for a 10% additional tax on early distributions from –
 - Non-qualified annuities and
 - Qualified retirement plans (including IRAs)
- IRC §72(q)(2)(D) and IRC §72(t)(2)(A)(iv) each provide an exception to the additional tax for distribution that are *part of a series of substantially equal periodic payments*

Distribution Planning ... Notice 2022-6



- Background (Cont.)

- Rev. Rul. 2002-62, 2002-42 I.R.B. 710 provided for three safe harbor methods to avoid the application of IRC §72(t) -
 - RMD method
 - Fixed amortization method
 - Fixed annuitization method
- The ruling also provides more guidance on the various assumptions including -
 - Life expectancy table
 - Interest rate
 - Account balance

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Distribution Planning ... Notice 2022-6



- Notice 2022-6 – makes several notable changes

- Life expectancy tables
 - The uniform lifetime table
 - The single life table
 - The joint and last survivor table
- For purpose of the fixed annuitization – *the annuity factor is derived using the mortality table in [Treas Regs §1.401\(a\)\(9\)-9\(e\)](#)*

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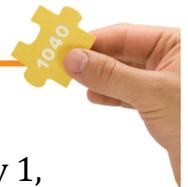
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Distribution Planning ... Notice 2022-6



- Notice 2022-6 – makes several notable changes (Cont.)
 - For purpose of the fixed annuitization – *the annuity factor is derived using the mortality table in Treas Regs §1.401(a)(9)-9(e)* –
 - Interest rate - ... greater of
 - 5% or
 - 120% of the federal mid-term rate
 - Account balance ... retains the prior rule of ... *in a reasonable manner based on the facts and circumstances*

Distribution Planning ... Notice 2022-6



- Notice 2022-6 – Effective dates
 - Notice applies to **new** SEPPs arrangements commencing on January 1, 2023
 - For calendar year 2022, may use Notice 2022-6 or Notice 2002-62
 - It appears that for existing SEPP arrangements (prior to calendar year 2022) a taxpayer may apply certain rules from the most recent guidance (i.e., the RMD switch and the use of appropriate updated life expectancy tables)

An Overview of the IRC §72(t) Payment Rules



- IRC §72(t)(4)(A) provides that once an individual begins to take IRC §72(t) distribution from a retirement account, they must continue doing so over the *longer* of –
 - 5 years or
 - Until they reach age 59½ (absent the taxpayer’s death or disability in the interim)
- **Example** – William commences IRC §72(t) distributions at age 57. William must maintain their distribution schedule for 5 years. At age 59½ William will have only received distributions for a 2½ year period, but the payment schedule must be maintained for a minimum of 5 years.

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An Overview of the IRC §72(t) Payment Rules



- **Example** – Mary begins a series of SEPPs at age 42. She will have to maintain the schedule for almost two decades because she will not turn age 59½ for 17½ years (the period longer than 5 years or the attainment of age 59½)

CAUTION – FAILURE TO MAINTAIN THE SEPPs SCHEDULE WILL RESULT IN PENALTIES FOR CHANGING OR CANCELING THE PAYMENT SCHEDULE!

- If the taxpayer modifies their SEPP schedule before either the end of the 5-year period or reaching age 59½ (whichever comes later), the IRC §72(t) – 10% early distribution penalty - will be applied **retroactively** to all pre-tax distributions taken prior to age 59½
- The IRS will also retroactively apply interest to those amounts – that is, treating the penalty as if it had been applied at the time of distribution but had not yet been paid!

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FAILURE to Maintain a SEPP Schedule by Example



EXAMPLE #1

In 2014, at the age of 48, Harry established a SEPP schedule to make periodic distributions from this Tradition IRA. According to the IRC §72(t) provisions, the schedule was set to conclude in 2025, when Harry reached age 59½.

In calendar year 2021, Harry completely forgot to take his SEPP. As a result of the error, the 10% penalty will be retroactively applied to **all** of Harry's prior distributions, from the first one in 2014 to the most recent in 2020.

Also, the IRS will apply to the 2014 10% penalty amount as though the amount had always been owed since 2014, but had not yet been paid, resulting in seven (7) years worth of interest applied to the 2014 payment. *Interest will apply to the 2015 10% penalty amount as though the amount had always been owed since 2015, but had not yet been paid, resulting in six (6) years worth of interest applied on the 2015 payment.* Continue this same process for 2016 through 2020!

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Polling Question #1



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FAILURE to Maintain a SEPP Schedule by Example



- Making IRC §72(t) payments or the SEPP payments is extremely critical for avoiding early distribution penalties
- In addition, **the potential interest costs could be significant**
- Also, make certain that you properly compute the payment amounts ... there is little guidance on how to properly calculate IRC §72(t) SEPP distributions and exactly what “substantially equal” means!

Distribution Planning ... Notice 2022-6



- Determining SEPP payments using the RMD methodology
 - The taxpayer’s current account balance is divided each year by an appropriate life expectancy factor
 - Notice 2022-6 provides that the ‘new’ life expectancy tables released in November 2020 (applied to distribution beginning in 2022) may be used
 - **NOTE:** *The application of the life expectancy tables for any SEPP arrangement commencing in calendar year 2023 must use the new tables*

Distribution Planning ... Notice 2022-6



- Determining SEPP payments with *Amortization or Annuitization methodologies*
 - Using these methodologies result in level payment from year to year
 - Amortization method
 - Annuitization method

Distribution Planning ... Notice 2022-6



- Determining SEPP payments with Amortization or Annuitization methodologies
 - **Amortization method** – *payments are determined by amortizing the individual's account balance over a number of years (based on life expectancy determine from one of the approved tables) and using an appropriate interest rate*
 - **Annuitization method** – *divides the account balance by an annuity factor that is the present value of an annuity of \$1 per year beginning at the employee's age and continuing for the life of the employee (or the joint lives of the employee and a designated beneficiary)*
 - **REMEMBER** – Using these methods still permit the taxpayer to make a one-time switch to the RMD method

Distribution Planning ... Notice 2022-6



- Notice 2002-62 provided original interest rate guidelines
 - This notice, for the first time, provided interest rate guidance when using the amortization or the annuitization SEPP methodologies
 - The notice defined the term *reasonable interest rate* in terms of the applicable AFR -

The interest rate that may be used is any interest rate that is not more than 120 percent of the federal mid-term rate (determined in accordance with [IRC §1274\(d\)](#) for either of the two months immediately preceding the month in which the distribution begins).

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Distribution Planning ... Notice 2022-6



- Background (Cont.)
 - Rev. Rul. 2002-62, 2002-42 I.R.B. 710 provided for three safe harbor methods to avoid the application of IRC §72(t) –
 - RMD method
 - Fixed amortization method
 - Fixed annuitization method
 - The ruling also provides more guidance on the various assumptions including –
 - Life expectancy table
 - Interest rate
 - Account balance

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Distribution Planning ... Notice 2022-6



- Notice 2022-6 expands interest rate guidelines with a new guaranteed 5% or better maximum
 - The notice now provides that taxpayers may use the greater of
 - 120% of the applicable Federal mid-term rate, or
 - 5%
- When calculating SEPPs under the amortization or annuitization methods***
- The ability to use this enhanced interest rate structure may begin for any series of payments starting in 2022 or later

Notice 2022-6 Expands Interest Rate Guidelines



EXAMPLE #2

Susan, age 50, has recently decided to use SEPPs to access her IRA funds without incurring an early distribution penalty, and plans to make a series of annual distributions from her IRA starting in March 2022. Susan's current IRA balance is \$1 million.

Unfortunately, Susan is not aware of the new rules provided by Notice 2022-6 and calculates her maximum annual SEPP using the 1.69% pre-Notice 2022-6 maximum rate.

After using each of the three methods and available life expectancy tables to calculate her potential maximum SEPP, Susan determines that the amortization method yields the highest possible annual IRC §72(t) distribution of \$37,156.28.

Notice 2022-6 Expands Interest Rate Guidelines



EXAMPLE #3

Jeanette is Susan's identical twin sister. She, too, has recently decided to use SEPPs to access her IRA funds without a penalty. And she, too, has a current IRA balance of \$1 million.

Thankfully for Jeanette, her advisor is aware of the new 5% interest rate limit for IRC §72(t) and uses it to calculate her maximum annual SEPP, to begin in March 2022.

After using each of the three methods and available life expectancy tables to calculate her potential maximum annual SEPP, Jeanette determines that the amortization method yields the highest possible annual SEPP of \$60,312.23, an increase of more than \$23,000 compared to her sister Susan's distributions (and what Jeanette herself would have been limited to had she been limited by the 'old' rules)!

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Distribution Planning ... *Notice 2022-6*



- The balance of accounts with SEPPs may only change from investment gains and losses
 - Regardless of the method used to compute the SEPPs, any changes to the balances of accounts may only arise from investment gains and/or losses, and from the SEPPs themselves
 - Therefore, any additional contributions to the account(s) or rollovers (into or out of the account) will be deemed a modification of the SEPP schedule

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Distribution Planning ... Notice 2022-6

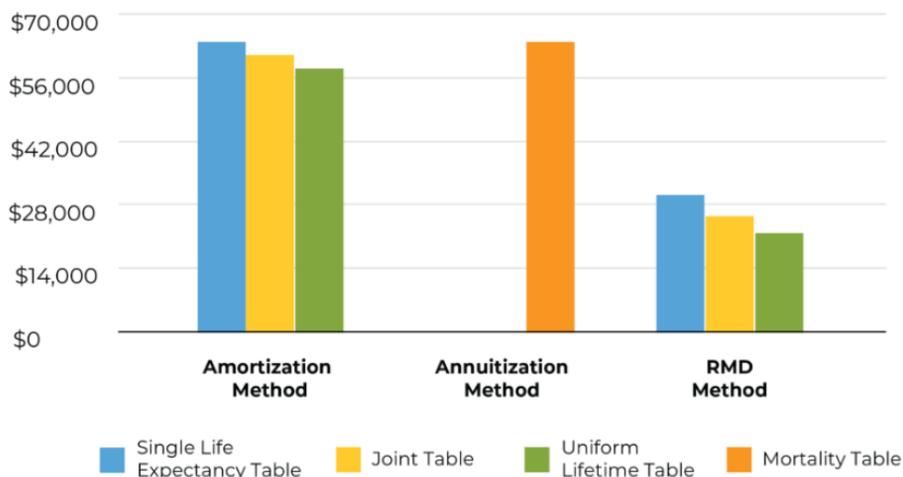


- SEPP planning using the new 5% floor maximum interest rate
 - In practice what does maximizing the SEPP from the smallest possible IRA account balance mean?
 - It means calculating new IRC §72(t) distributions using the following –
 - The amortization method
 - The single life expectancy table
 - An interest rate equal to the greater of 5%, or 120% of the applicable AFR
 - Graphic analysis ... a 50-year-old individual with a \$1,000,000 account balance and the use of a 5% constant interest rate

SEPP Early Distribution Alternatives ...



72(t) Early Distribution Alternatives



Distribution Planning ... *Notice 2022-6*



- Graphic analysis notes -
 - Note that under the amortization and RMD methods, the single life expectancy table produces the largest SEPP annual distribution
 - Note that the annuitization method (not using a life expectancy table) produces a reasonable IRC §72(t) payment amount, but does not quite reach the payment amount when using the amortization method (and the single life table)
 - Note that the amortization method, when used with the single life expectancy table produces the highest IRC §72(t) payment amount regardless of the IRA owner's age, the account balance, or the interest rate used in the computation

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Distribution Planning ... *Notice 2022-6*



- Splitting retirement assets and producing the IRC §72(t) asset bucket
 - The Notice increases the amount of penalty-free distribution that individuals can potentially take from their retirement accounts ... easing a taxpayer's cash flow needs
 - But higher maximum IRC §72(t) payment may create excess funds in different scenarios or force the individual to take out amounts in excess of their cash flow needs.
 - Consideration should be given to splitting retirement balances into multiple accounts prior to establishing the IRC §72(t) schedule

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Notice 2022-6 Expands Interest Rate Guidelines



EXAMPLE #4

Recall Jeanette from Example 3, who is 50 years old and has a current IRA balance of \$1 million. Further recall that, using the new 5% floor rate for IRC §72(t) calculations, Jeanette calculated a maximum annual IRC §72(t) payment of \$60,312.23.

*Now, imagine Jeanette's was to generate only \$50,000 of penalty-free distributions from her IRA annually. Prior to the introduction of the 5% floor interest rate, Jeanette would **not** have been able to generate an IRC §72(t) payment large enough to meet that goal, even when using her entire account balance to calculate the payment (recall that her sister Susan calculated a maximum payment of \$37,156 using a pre-Notice 2022-6 maximum rate of 1.68%).*

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Notice 2022-6 Expands Interest Rate Guidelines



EXAMPLE #4 (Cont.)

However, with the new 5% interest rate, she's able to generate more than she needs to meet her cash flow goals. Accordingly, Jeanette transfers \$170,981 from her \$1 million IRA account to **another** IRA before establishing the IRC §72(t) schedule using only the first IRA account (which now has a remaining balance of \$1 million - \$170,981 = \$829,019). With this strategy, using a 5% interest rate with the amortization calculation method and the Single Life Expectancy table, Jeanette calculates an annual IRC §72(t) payment of exactly \$50,000!

Furthermore, if Jeanette has an unanticipated expense and needs access to additional funds, the \$170,981 she transferred to the separate IRA would be available without the need to worry about creating a modification of the IRC §72(t) schedule (though such distributions would, themselves, still be subject to the 10% early distribution penalty if not eligible for an exception).

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Distribution Planning – *Qualified Charitable Distributions (QCD)*



- General rules and requirements
 - An IRA owner can make a QCD of up to \$108,000 (2025) and \$104,000 (2024) [SECURE 2.0 Act provides for indexing]
 - The IRA owner must be at least age 70½ on the date the QCD **is made** from the IRA
 - Eligible accounts include –
 - Traditional IRA, including *inherited IRA*
 - Roth IRA, including *inherited IRA* (taxable amounts only)
 - **Charitable documentation requirements ... [IRC §170\(f\)](#)**

Distribution Planning – *Qualified Charitable Distributions (QCD)*



- General rules and requirements (Cont.)
 - Eligible accounts include –
 - Traditional IRA, including *inherited IRA*
 - Roth IRA, including *inherited IRA* (taxable amounts only)
 - Ineligible accounts include –
 - “Ongoing” SEP IRA or SIMPLE IRA
 - Assets that are being held in an employer sponsored retirement plan (e.g., IRC §401(k) Plan)

Distribution Planning – Qualified Charitable Distributions (QCD)

- General rules and requirements (Cont.)
 - Appropriate planning points for employer sponsored retirement plans
 - If an individual wants to use these assets to make a QCD, the amount must first be rolled over to an IRA
 - Then the QCD could be made from the rollover IRA
 - **Note** – Any RMD due from the employer sponsored retirement plan must be distributed **before** the rollover to the IRA. Only eligible amounts can be rolled over and **an RMD distribution is not an eligible rollover amount**
 - **Caution:** *Care must be taken to ensure that all tax implications are considered, including whether any tax benefits would be lost as a result of the rollover*

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Polling Question #2

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Distribution Planning – *Qualified Charitable Distributions (QCD)*



- General rules and requirements (Cont.)
 - Amount must be made payable to the charity, and must be distributed by the end of a year to be counted as a QCD for that year
 - **The IRA custodian must make the QCD payable to the charity**
 - **If paid by check, the check may be given to the IRA owner, who turn can deliver the check to the charity**
 - **The charity must be an organization described in IRC §170(b)(1)(A), other than an organization described in [IRC §509\(a\)\(3\)](#) or a donor advised fund as defined in [IRC §4966\(d\)\(2\)](#)**

Distribution Planning – *Qualified Charitable Distributions (QCD)*



- General rules and requirements (Cont.)
 - Tax treatment – Excluded from income
 - If the IRA includes nondeductible contributions, the distribution is first considered to be paid out of otherwise taxable income
 - The IRA owner cannot claim a charitable contribution deduction for any QCD not included in income
 - The exclusion applies only if a charitable contribution deduction for the distribution otherwise would be allowable (determined without regard to the generally applicable percentage limitations)

Distribution Planning – *Qualified Charitable Distributions (QCD)*



- General rules and requirements (Cont.)
 - Tax treatment – Anti-abuse provision – Reduction of QCD amount for deductible IRA contributions
 - A QCD must be coordinated with deductible Traditional IRA contributions
 - The QCD will be reduced (but not below zero) by the aggregate deductions for Traditional IRA contributions for the year of the QCD
 - Once the excludible amount of a QCD is reduced by a deductible IRA contribution, that deductible IRA contribution may not reduce the excludible amount of another QCD.

Distribution Planning – *Qualified Charitable Distributions (QCD)*



- General rules and requirements (Cont.)
 - Tax treatment – No tax withholding – QCDs are not subject to the tax withholding rules
 - Tax reporting – [Form 1099-R](#) reporting
 - The IRA custodian reports the amount as a regular distribution (no special reporting) on Form 1099-R for the year in which the QCD is made
 - For calendar year 2025, the Form 1099-R will have a new “Y” code to designate a Qualified Charitable Distribution
 - See the excerpts from the 2025 Form 1099-R instructions on the next slide ...

Distribution Planning – Qualified Charitable Distributions (QCD)

• General rules and requirement (Cont.)

- Surprise ... IRA Sneaks in New Code for QCD Reporting on Form 1099-R (April 15, 2025)
 - Code Y will be used to designate *Qualified charitable distribution* (QCD) claimed by a taxpayer under IRC §408(d)(8) in Box 7 of Form 1099-R

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Distribution Planning – Qualified Charitable Distributions (QCD)

2025 Form 1099-R Reporting and Code Y for QCD Instructions for Forms 1099-R and 5498 (2025)

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

What's New

New code Y for box 7. We added a new code "Y" to the list of codes for box 7 to identify a qualified charitable distribution (QCD). See [Qualified charitable distributions \(QCDs\)](#), later.

Qualified charitable distributions (QCDs). Generally, a QCD is a nontaxable distribution made directly by the trustee of your IRA to an organization eligible to receive tax-deductible contributions. See Qualified charitable distributions (QCDs) in [Pub. 590-B](#) for more information.

To report a QCD use code Y with:

- Code 7 for a QCD from a non-inherited (normal distribution) IRA,
- Code 4 for a QCD from an inherited (death distribution) IRA, or
- Code K for a QCD reporting distributions of traditional IRA assets not having a readily available FMV that are either from non-inherited or inherited IRAs.

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Distribution Planning – *Qualified Charitable Distributions (QCD)*



- QCD and Required Minimum Distributions (RMD)
 - IRA owners must begin taking RMDs for the year in which they reach the applicable RMD age (currently age 73) and continue such practice every year thereafter
 - RMDs must generally be distributed by December 31 of the year for which they are required
 - Beneficiaries with inherited IRAs must also take RMDs from such inherited IRAs
 - Individual may use a QCD to satisfy their RMD.
 - However, the QCD must be made before the RMD has been satisfied

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Distribution Planning – *Qualified Charitable Distributions (QCD)*



- QCD and Required Minimum Distributions (RMD) – **EXAMPLE #1**
 - Mary is age 73 in June of 2025 and must take an RMD for 2025 from her traditional IRA
 - However, Mary may delay such distribution until April 1, 2026 (the required beginning date (RBD))
 - Mary's RMD is \$15,000 for 2025 (based on the account balance on 12/31/2024)
 - Mary decides to take a distribution of \$25,000 in April of 2025 and deposits the distribution into her checking account
 - Mary also make a QCD of \$7,500 from her traditional IRA in August of 2025

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Qualified Charitable Distributions (QCD) – EXAMPLE #1 - RESULTS



- \$15,000 of the \$25,000 distributed in April is treated as her RMD for 2025; because this is the first distribution processed during calendar year 2025
- The \$25,000 distributed in April is treated as ordinary income, with any pre-tax amount being taxed
- The \$7,500 QCD distributed in August of 2025 is nontaxable, provided it meets all of the QCD requirements
- Since Mary took her RMD before this QCD was processed, her QCD will **not** count as part of her RMD for calendar year 2025
- No amount of the \$7,500 is included in Mary's income
- The \$7,500 is not considered when determining the amount of Mary's charitable deduction for the year

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Distribution Planning – Qualified Charitable Distributions (QCD)



- QCD and Required Minimum Distributions (RMD) – EXAMPLE #1 –
A Tip for Mary
 - Mary could have rolled over the \$10,000 of the \$25,000 into an IRA rollover using the 60-days of receipt rule (one cash distribution rollover during a 12-month period rule)
 - This is allowed because the amount that is more than the RMD is treated as qualifying as a “qualified rollover” amount

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Distribution Planning – Qualified Charitable Distributions (QCD)



- QCD and Required Minimum Distributions (RMD) – **EXAMPLE #2**
 - Sam reaches age 74 in March of 2025
 - Sam's traditional IRA RMD for 2025 is \$22,500
 - Sam requests a QCD of \$75,000 from his traditional IRA in April 2025
 - This QCD was Sam's first distribution from his IRA for calendar year 2025
 - **Note:** *For purposes of this example, Sam previously took a distribution in calendar year 2024 that qualified as an RMD (Sam turned age 73 in March of 2024), even though his required beginning date is 4/1/2025*

Distribution Planning – Qualified Charitable Distributions (QCD)



- QCD and Required Minimum Distributions (RMD) – **EXAMPLE #2 - RESULTS**
 - Sam is not required to distribute any additional amount for the year – *the QCD counts towards his \$22,500 RMD and it was his first distribution for the year*
 - No amount of the \$75,000 will be included in Sam's gross income for calendar year 2025
 - The \$75,000 is not considered when determining the amount of Sam's charitable deduction for calendar year 2025

Distribution Planning – *Qualified Charitable Distributions (QCD)*



- QCD and Required Minimum Distributions (RMD) – **EXAMPLE #3** -
 - Brian is age 74 and wants to make a QCD of \$30,000 for 2025
 - Brian's RMD for 2025 is \$22,500
 - He wants to make sure the QCD strategy works “double-duty” ... meet his RMD requirement and qualifies as QCD
 - He would also like to take another distribution of \$25,000 and wants to roll over to another IRA

Distribution Planning – *Qualified Charitable Distributions (QCD)*



- QCD and Required Minimum Distributions (RMD) – **EXAMPLE #3** – RESULTS
 - Make sure Brian makes the QCD prior to making the other IRA distribution (the \$25,000 rollover distribution)
 - Make sure Brian applies the 60-days of receipt rollover rule and the completes the rollover within this time period
 - Make sure that the rollover is the only IRA-to-IRA rollover completed during the 12-month period
 - Brian needs to communicate with the tax professional the QCD and the rollover planning strategies so that proper reporting can be completed on his income tax return.

Distribution Planning – *Qualified Charitable Distributions (QCD)*

- No double dipping – QCDs and Traditional IRA contributions
 - SECURE 1.0 Act amended QCD rules by providing that the excludable amount is reduced by the total amount of IRA contributions deducted for the year
 - Any excludable QCD amount for a tax year is not reduced by the amount of post-age 70½ contributions that caused a reduction in the excludable QCD amount for earlier tax years
 - These change apply to contributions and distribution made for tax years beginning after 12/31/2019

Qualified Charitable Distributions (QCD) – EXAMPLE #4

- Martin (72 years old) makes the following deductible IRA contributions and QCDs

Deductible Traditional IRA Contributions	Qualified Charitable Distributions
<ul style="list-style-type: none"> • \$5,000 for 2023 • \$5,000 for 2024 • \$0 for 2025 	<ul style="list-style-type: none"> • \$6,000 for 2024 • \$6,500 for 2025

- Results –
 - The excludable QCD amount for 2024 is the \$6,000 QCD reduced by the \$10,000 aggregate amount for post-age 70½ contributions for 2024 and prior years. Martin will have a \$4,000 excess deductible IRA contribution that will reduce future QCD contributions
 - The excludable amount of QCD for 2025 is the \$6,500 amount donated to charity reduced by the \$4,000 carryover traditional IRA deduction. The excludable amount of the QCD for 2025 is \$2,500 (\$6,500 minus \$4,000 or \$2,500)
 - There is no further carryover adjustment in 2026 from the aggregate traditional IRA contribution

Qualified Charitable Distributions (QCD) – Planning Tips



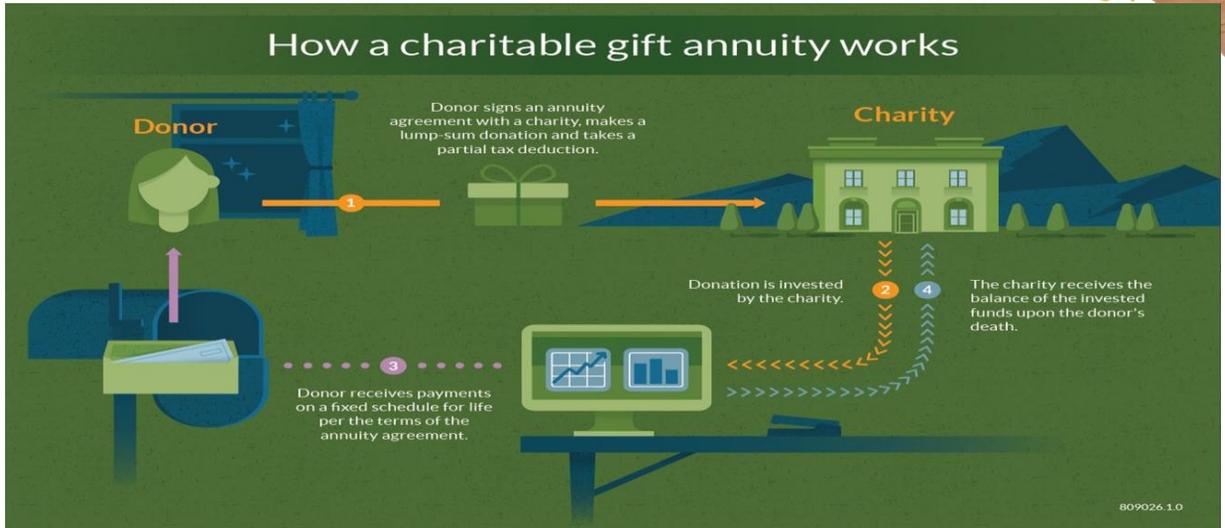
- Often helps maximize other tax attributes associated with the Adjusted Gross Income (AGI) limitation provisions –
 - Net Investment Income Tax (3.8% tax)
 - Medicare Premiums under Part B and Part D
 - Taxability of Social Security income

SECURE 2.0 Act – Qualified Charitable Distributions (QCDs)



- One-Time Opportunity to Use QCD to Fund a Split-Interest Entity
 - Beginning in 2023, taxpayers may take advantage of a one-time opportunity to use a QCD to fund a CRUT (Charitable Remainder Unitrust), CRAT (Charitable Remainder Annuity Trust) or **CGA (Charitable Gift Annuity)**
- At first blush, this one-time opportunity to fund a CRUT or CRAT might be attractive. However, given the complexity and the limit amount that may be funded, not sure this tax advantage outweighs the administrative costs

SECURE 2.0 Act ... §307 ... Qualified Charitable Distributions (QCDs)



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SECURE 2.0 Act – §307 - Qualified Charitable Distributions (QCDs)



- One-Time Opportunity to Use QCD to Fund a Split-Interest Entity
 - The maximum amount that can be transferred is \$50,000 (adjusted for inflation)
 - What if we contribute an additional \$50,000 to an existing CRUT?
 - Congress says **no!** [Act §307](#) states that a distribution to a CRUT or CRAT will only count as a QCD if the trust is funded exclusively by qualified charitable distributions
 - Further limitation – “only income beneficiaries of such a qualifying CRUT or CRAT can be the IRA owner and their spouse. A one-time \$50,000 QCD distribution creates a maximum of \$100,000.
 - Again, hard to imagine the time, expense and complexity that comes with using a CRUT or CRAT is worth it for the amount of contribution

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Polling Question #3



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Retirement / IRA Distribution Planning ... Fundamental Concepts



- The Basics
 - An IRA is either a trust or a custodial account
 - The trustee or custodian must be a bank or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which they will administer the account will be consistent with the requirements of this section (reference to the Internal Revenue Code for IRAs – [IRC §408](#))

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Retirement / IRA Distribution Planning ... Fundamental Concepts



- The Basics
 - Internal Revenue Code Defines and Provides Guidance for IRAs and Qualified Retirement Plans
 - IRC §408 (IRAs) and IRC §408A (Roth IRAs)
 - [IRC §401](#) – Distribution Rules
 - Other Tax Law including Income, Estate, Gift and Generation Skipping Taxation
 - IRS Guidance – Revenue Ruling, Revenue Procedures, and Private Letter Rulings
 - ERISA – Employee Retirement Income Security Act
 - REA – Retirement Equity Act
 - Bankruptcy Law

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Retirement / IRA Distribution Planning ... Fundamental Concepts



- The Basics
 - State Law May Apply to IRAs and Qualified Retirement Plans
 - Uniform Principal and Income Act (UPIA)
 - Power of Attorney
 - Guardianship
 - Intestacy
 - Elective share, community property and divorce
 - Bankruptcy
 - Tort

Conduit Trust and the Ten-Year Rule – Fiduciary Accounting and Property Law Issues

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Retirement / IRA Distribution Planning ... Fundamental Concepts



- Disposition After Death
 - Beneficiary designation form, as opposed to a will, controls the property owner after death
 - State property law preempted by ERISA and REA (Retirement Equity Act of 1984)
 - Income tax consequences will vary substantially depending how the beneficiary form is completed



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Retirement / IRA Distribution Planning ... Fundamental Concepts



- Retirement Equity Act and *Boggs vs Boggs*
 - Plans must offer automatic survivor benefits
 - Non-employee spouse's community / marital property interest in the plan terminates with the non-employee spouse's death
 - Non-employee spouse does not have the power to name a plan beneficiary
 - Spousal permission required for the employee spouse to name a non-spousal beneficiary (often referred to as a REA Waiver)

Authorities: IRC §§417 and 401(a)(11); Treas Reg §1.401(a)-20; *Boggs*, 177 S Ct 1754, 138 L Ed 2d 45 (1997)

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Retirement / IRA Distribution Planning ... Fundamental Concepts



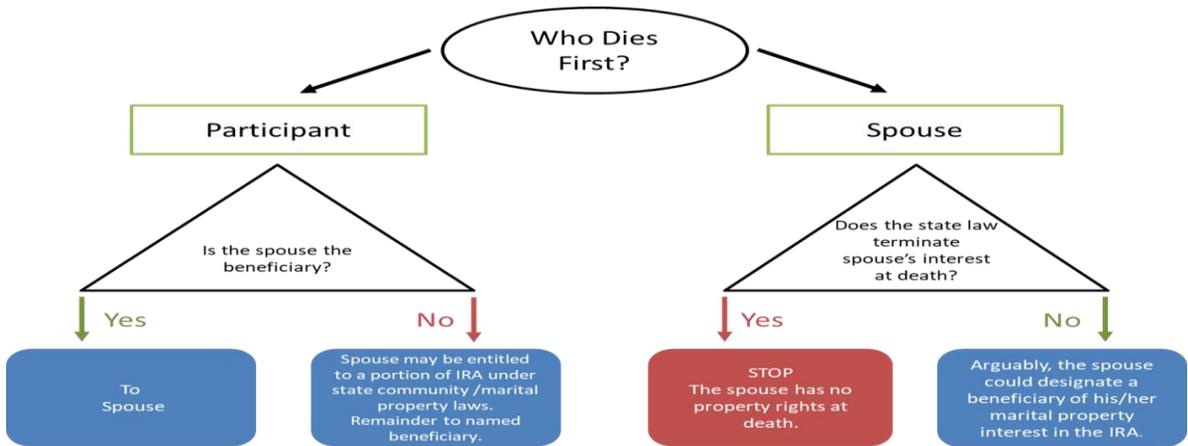
- Retirement Asset Disposition After Divorce
 - *Kennedy vs. Plan Administrator*
 - Ex-spouse gave up her right to the retirement plan as part of the divorce settlement, but the decedent did not change the beneficiary form to eliminate the ex-spouse
 - Holding: The plan administrator was required by ERISA to pay the benefits to the ex-spouse per the plan documents
 - **Reasoning:** ERISA preempts the marital settlement agreement

Retirement / IRA Distribution Planning ... Fundamental Concepts



- Retirement Asset Disposition After Divorce
 - *Egelhoff vs Egelhoff*
 - State law purported to automatically revoke a former spouse's status as beneficiary following a divorce
 - **Held:** State law that purports to control distributions from an ERISA plan is preempted

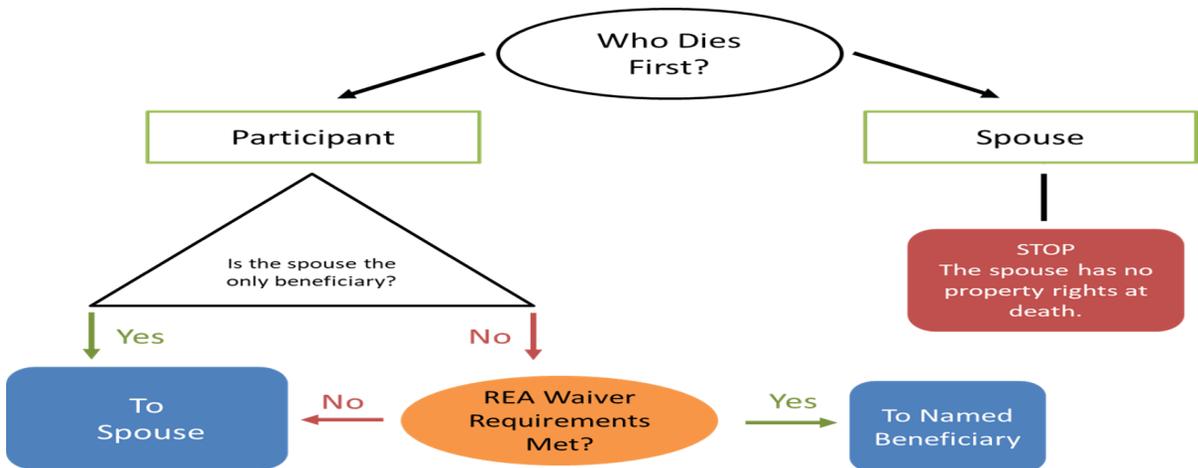
Retirement / IRA Distribution Planning ... *Fundamental Concepts – ERISA Plans at Death*



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Retirement / IRA Distribution Planning ... *Fundamental Concepts – ERISA Plans at Death*



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Retirement / IRA Distribution Planning ... KEY TERMS



- Stretch Distribution Before and After SECURE 1.0 Act
 - *Inherited IRAs – Key Terms*
 - Required Beginning Date (RBD) – the date when distributions are required to begin (April 1st)
 - Required Minimum Distributions (RMD) – the minimum amount that must be distributed from the account each year (SECURE 1.0 Act ... age 72 / SECURE 2.0 Act ... age 73 / 75)
 - Beneficiary – person/persons/entity named as beneficiary of the account
 - Designated Beneficiary – person or trust that qualifies as a designated beneficiary under the Treas Regs for IRC §401(a)(9). A qualified designated beneficiary is allowed to utilize the life expectancy of a beneficiary. Term defined in Treas. Reg. §1.401(a)(9)-4, Q&A 1
 - Non-Designated Beneficiary – A beneficiary that is not a designated beneficiary
 - Eligible Designated Beneficiary – A beneficiary exempted from the 10-year rule created by the SECURE Act as defined under IRC §401(a)(9)(H)

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Retirement / IRA Distribution Planning ... *Stretch Distribution Before and After SECURE 1.0 Act ...*



- *Inherited IRAs – Key Terms*
 - Objectives:
 - Prolong or stretch IRA payments over the longest possible period of time
 - Results – increase the wealth to future generations
- *Inherited IRAs – Key Terms*
 - **SECURE Act** – Key Concepts
 - Five – Year Rule
 - **Ten-Year Rule**
 - “Ghost” Rule
 - Life Expectancy Rule
 - Spousal Rollover Rule
 - **Ten-Year Rule, at Owner’s Death to Inherited Beneficiary**

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Retirement / IRA Distribution Planning ... *Stretch Distribution Before and After SECURE 1.0 Act ...*



- *Inherited IRAs*

- An IRA is treated as inherited if the individual for whose benefit the IRA is maintained, acquired the IRA on account of the death of the original owner
- **Ten-Year Rule Applies to Most Post-SECURE 1.0 Act Upon Death of IRA Owner**

Retirement / IRA Distribution Planning ... *Stretch Distribution Before and After SECURE 1.0 Act ...*



- Post-death RMDs based on whether a designated beneficiary exists –
 - Only individuals with quantifiable life expectancy can be designated beneficiaries
 - If Trust qualifies ... look through to the underlying Trust beneficiaries
 - Payout Rules
 - Pre-SECURE 1.0 Act Rules
 - Post-SECURE 1.0 Act Rules

Retirement / IRA Distribution Planning ...



- SECURE 1.0 Act – Ten (10) Year Payout Rule
 - Post-Death Distributions – SECURE 1.0 Act
 - **Non-Designed Beneficiaries**
 - Five-Year rule
 - “Ghost” Rule
 - **Designated Beneficiaries**
 - Ten-Year Rule
 - **Eligible Designated Beneficiaries**
 - Spouses – Life Expectancy
 - Minor Children – Life Expectancy (modified)
 - Disabled Beneficiaries – Life Expectancy
 - Chronically Ill Beneficiaries – Life Expectancy
 - Individual not more than 10 years younger than owner / employee



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Retirement / IRA Distribution Planning ... Inherited IRA Post-Secure 1.0 Act



- **Designated beneficiaries**
 - Individuals
 - Certain Designated Beneficiary Trusts
 - Eligible Designated Beneficiary Trusts
- **Non-designated beneficiaries**
 - Estates
 - Distribution out of estates to estate beneficiaries does not make the beneficiary the “designated beneficiary”
 - Charities
 - Non-Designated Beneficiary Trusts (Estates)
 - Five-Year rule for Pre-RBD Deaths
 - *Ghost* Rule for Post-RBD Deaths

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Retirement / IRA Distribution Planning ... Inherited IRA Post-Secure 1.0 Act



- **10-year Payout Rule – Eligible Designated Beneficiaries**

- Minor Child – A minor child of an IRA or Qualified Retirement Plan account is considered an Eligible Designated Beneficiary until his or her 21st birthday



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Retirement / IRA Distribution Planning ... Inherited IRA Post-Secure 1.0 Act



- **Disabled Persons**

- *Under IRC §72(m)(7) – an individual shall be disabled if they are 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 must provide proof of their disability*
- *If an individual is deemed disabled, they are allowed to use the Life Expectancy rule*

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Retirement / IRA Distribution Planning ... Inherited IRA Post-Secure 1.0 Act



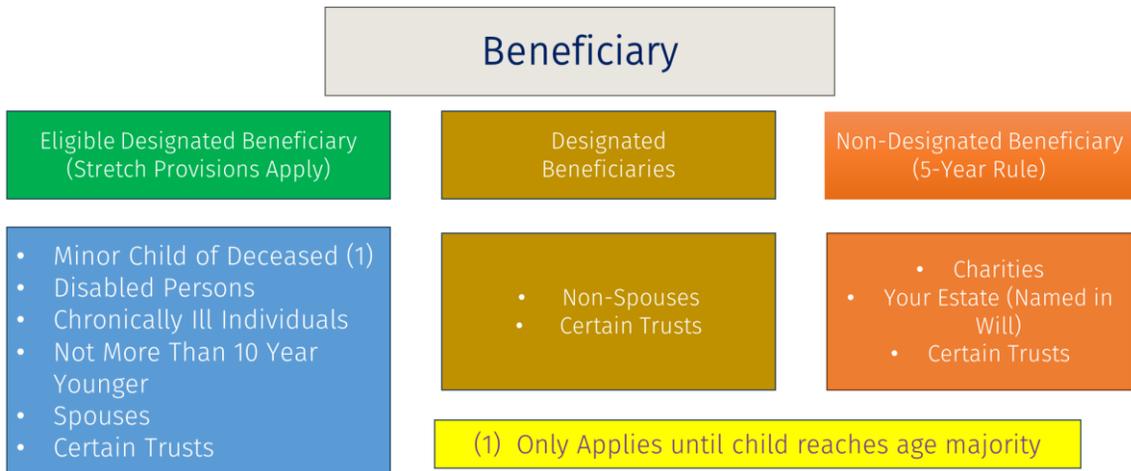
• **Chronically Ill**

- Under IRC §7702B(c)(2) - an individual who has been certified by a licensed health care provider / practitioner as –
 - Being unable to perform at least two activities of daily living for a period of at least 90 days due to loss of functional capacity,
 - Having a level of disability that is to the level of the bullet point described above, or
 - Requiring substantial supervision to protect such individual from threats to health and safety due to cognitive impairment
- An individual must provide proof of their disability
- If an individual is deemed chronically ill, they are allowed to use the Life Expectancy rule

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



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Polling Question #4



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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- ***Final RMD Regulations Keep Controversial Annual RMDs during 10-Year Period***
 - On July 18, 2024, new set of retirement account rules were released by the IRS
 - The new final regulations are taxpayer friendly
 - Beginning in 2025, some beneficiaries must take annual RMDs during the SECURE 1.0 Act's 10-year "payout" rule.
 - However, the rules and how and when RMDs must be taken remain complex

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- Executive summary of the final regulations on annual RMDs
 - Annual RMDs within the 10-year period are required when an account owner dies on or after the required beginning date (RBD)
 - The “At Least as Rapidly” (ALAR) rule does not require the exact same amount that was taken by the original owner to be beneficiary – but does require the process of taking RMDs continue
 - Final regulations make is clear that the ALAR rule applies during the 10-year rule after an EDB minor child of the account holder reaches age 21

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- Executive summary of the final regulations on annual RMDs (Cont.)
 - If the IRA owner dies on or after the RBD and the original beneficiary is a Non-Eligible Designated Beneficiary (NEDB) then the successor beneficiary will be subject to the same 10-year rule as the original beneficiary
 - Annual RMDs are required during the 10-year payout period by both the original beneficiary and any successor beneficiary
 - If the original beneficiary was an Eligible Designated Beneficiary (EDB), RMDs must also continue to the successor beneficiary using the EDB’s life expectancy

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- New Regulations handle the “Year of Death” RMDs
 - When an individual reaches their RBD (generally April of the year after the year the person turns age 73 (RMD age update by SECURE 2.0 ACT)) RMDs are officially started. Roth owners are always deemed to die before the RBD
 - It is now the responsibility of the beneficiary to take the year-of-death RMD. The only exception would be if the RMD is paid to the estate and estate was the beneficiary
 - The final regulations now provide that for most beneficiaries, the deadline to take the year-of-death RMD is December 31st of the year after the IRA owner’s death

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- New Regulations handle the “Year of Death” RMDs (Cont.)
 - If no distributions were taken from any IRA in the final year of the IRA owner’s life, you calculate the year-of-death RMD for each IRA. The beneficiary of each specific IRA must take the year-of-death RMD applicable to that account, from that account
 - If an IRA owner of multiple IRAs with different beneficiaries took a lifetime distribution from one of his or her IRAs, thereby partially satisfying her or her final aggregated RMD, we must now look to his or her total aggregated final RMD and apply the shortfall to each of his or her IRAs

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- Key tax planning considerations after the FINAL Regulations
 - The SECURE Act(s) are a wake-up call to rethinking our current planning for retirement distributions and probably something we as professional should have been doing all along
 - Most non-spousal beneficiaries of retirement accounts must take total distributions within 10 years
 - Start trimming IRA and other retirement account balances today in order to use the current historically low tax rates

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- Key tax planning considerations after the FINAL Regulations
 - Take complete advantage of the current 12%, 22% and 24% brackets in calendar year 2025
 - Monitor current tax legislation regarding the future of income tax rate brackets after calendar year 2025
 - Effective tax planning includes taking pre-tax distributions from retirement accounts this year, up to the taxable income amounts. Assuming the cash flow is not needed for accustomed living expenses, consider using the funds for –
 - Roth IRA conversions
 - Life insurance premiums
 - Charitable contributions (i.e., QCDs for taxpayers ages 70½ or older)

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- Key tax planning considerations after the FINAL Regulations
 - A Roth IRA makes a better trust beneficiary because distributions from an inherited ROTH IRA to the trust will be income tax-free.
 - This is true even if the funds are accumulated by the trust.
 - Traditional IRAs are exceptionally bad assets to leave to trusts because modest amounts of future trust income will be taxed at the top tax rate

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



EXAMPLE

William inherited a traditional IRA from his father, Charles who died at age 87 in 2020. William is subject to the 10-year payout rule under SECURE 1.0 Act. He must empty the inherited IRA account by December 31, 2030. In addition, the final regulations require William to take annual RMDs based on his life expectancy in years one (1) through nine (9) of the 10-year payout period.

However, several IRS notices during the 2022 through 2024 waived any excise tax penalty for missed RMDs in years 2021 through 2024. William is not required to take any RMDs during these years of the 10-year payout period.

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



EXAMPLE (CONT.)

So, how is William supposed to compute the annual RMDs for 2025 through 2029 assuming William turned age 58 in 2020 (the year Charles died)? Let's look at calendar year 2025 when William turns age 63 in 2025.

You may think that we would consult the current IRS Single Life Expectancy Table and determine the life expectancy factor for a 63-year-old is 24.5 and assume further than Williams' 2025 RMD is the 12/31/2024 value of the inherited IRA divided by 24.5.

Unfortunately, this is not accurate! This is too easy!

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



EXAMPLE (CONT.)

The tax advisor would need to recompute the life expectancy factor.

First, we need to determine William's baseline life expectancy in 2021 (the year following the year of Charles' death). William was age 59 in calendar year 2021. The life expectancy of a 59-year-old under the current Single Life Expectancy Table is 28.0.

Second, we would subtract 1.0 for each subsequent year up to 2025. Subtracting 1.0 for each subsequent year gets us to a 24.0-year life expectancy factor William's 2025 RMD.

Finally, William's 2026 RMD factor will be 23.0; his 2027 RMD factor will be 22.0; and so on until 2030.

In 2030, William must take out all of what remains in the inherited IRA.

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*Retirement / IRA
Distribution
Planning ... Final
RMD Regulations
– Inherited IRAs*

Single Life Expectancy Table

(For Use by Beneficiaries)

Table effective January 1, 2022

Age	Life Expectancy	Age	Life Expectancy
0	84.6	30	55.3
1	83.7	31	54.4
2	82.8	32	53.4
3	81.8	33	52.5
4	80.8	34	51.5
5	79.8	35	50.5
6	78.8	36	49.6
7	77.9	37	48.6
8	76.9	38	47.7
9	75.9	39	46.7
10	74.9	40	45.7
11	73.9	41	44.8
12	72.9	42	43.8
13	71.9	43	42.9
14	70.9	44	41.9
15	69.9	45	41.0
16	69.0	46	40.0
17	68.0	47	39.0
18	67.0	48	38.1
19	66.0	49	37.1
20	65.0	50	36.2
21	64.1	51	35.3
22	63.1	52	34.3
23	62.1	53	33.4
24	61.1	54	32.5
25	60.2	55	31.6
26	59.2	56	30.6
27	58.2	57	29.8
28	57.3	58	28.9
29	56.3	59	28.0

SINGLE LIFE EXPECTANCY TABLE
(01/2022) RETSLET

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*Retirement / IRA Distribution Planning ... Final RMD
Regulations – Inherited IRAs*



Comment –

- If the original beneficiary was a “Non-Eligible Designated Beneficiary” (NEDB), RMDs must also continue to the successor beneficiary using the original NEDB’s life expectancy.
- The successor beneficiary will essentially step into the shoes of the first beneficiary for purposes of the 10-year payout period.

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



EXAMPLE

Alan dies in 2024 at age 85. His IRA beneficiary is his adult son AJ. AJ is a NEDB. Thus, AJ is subject to the 10-year payout period rule and must take annual RMDs in years one (1) through nine (9) over his life expectancy. Also, since Alan reached his RBD, RMDs must continue to his beneficiary AJ.

AJ names his daughter Katie as successor beneficiary. AJ dies in 2026. Katie maintains the existing 10-year period associated with AJ and must empty the inherited IRA by December 31, 2034. She must also continue annual RMDs in years three (3) through nine (9) (2027 through 2033) of the 10-year payout period based on AJ's single life expectancy.

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



EXAMPLE

Michael died in 2025 at age 59. He named his daughter Julianna, age 35 at the time, as beneficiary of his inherited IRA account. On that date, Julianna qualified as a chronically ill EDB under the Internal Revenue Code's definition for "chronically ill". Julianna is able to begin taking stretch RMDs based on her own single life expectancy.

Julianna dies in 2032 with her son Jared as her primary beneficiary. Jared as successor beneficiary is age 21 and must initiate a 10-year payout period and receive the remaining inherited IRA portion by the end of the 10th year following his mother's death (December 31, 2042).

Since Julianna turned RMDs on as an EDB, the ALAR (at least as rapidly) rule dictates that Jared cannot turn RMDs off.

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



EXAMPLE (CONT.)

Jared must take RMDs for years one (1) through nine (9) (calendar years 2033 through 2042) with the 10-year payout period by continuing Julianna's RMD schedule. It does not matter that Michael had not yet started taking RMDs at his death.

Note: *The final regulations permit the commencement of the RMDs to Jared on the year following Julianna's death.*

Retirement / IRA Distribution Planning ... Final RMD Regulations – Inherited IRAs



- Final Regulations – *Effective Date*
 - The proposed regulations originally were to apply to distributions on or after January 1, 2022
 - However, the final regulation apply to calendar years beginning on or after January 1, 2025
 - Taxpayer must take into account a reasonable, good faith interpretation of the changes made by the SECURE 1.0 Act and SECURE 2.0 Act for earlier years (applying the 2002 and 2004 final regulations
 - **FUNDAMENTAL CONCEPT** ... Once the RMD “switch” is turned on - it is “never” turned off ...
 - **SURPRISE** ... No make up RMD distribution for calendar years 2021 through 2024 ... Final Regulations ...



Regulations Table of Contents

§1.401(a)(9)-0

- §1.401(a)(9)-1 *Minimum distribution requirement in general*
- §1.401(a)(9)-2 *Distributions commencing during an employee's lifetime*
- §1.401(a)(9)-3 *Death before required beginning date*
- §1.401(a)(9)-4 *Determination of the designated beneficiary*
- §1.401(a)(9)-5 *Required minimum distributions from defined contribution plans*

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- Key Provisions
 - RBD for those born in 1959
 - Partial annuitization of defined contribution plans and satisfying RMDs
 - Distributions from ROTH §401(k)s
 - Corrective distributions and excise tax
 - **Section 327 from SECURE 2.0 – Spousal Election**
 - Divorce after joint and last survivor QLAC purchase
 - Outright distribution to trust beneficiary (splitting / distribution in case of multi-beneficiary trust allowed)

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Retirement / IRA Distribution Planning ... New PROPOSED Regulations ... Summary Table of Key Effects



Area	Change / Clarification	Reference
Spousal Election	Surviving spouse can elect to be treated as employee for RMDs; automatic in some cases	IRC §401(a)(9)(B)(iv), Prop Regs – REG-103529-23
RMD Calculation	Use Uniform Lifetime Table for the spouse if election is made	Prop Regs – REG-103529-23
Excise Tax Relief	Correction window for reduced / waived excise tax on missed RDMs	IRC §4974(e); Prop Regs – REG-103529-23
Corrective Distributions	Not counted toward current year RMD; not eligible for rollover	Prop Regs – REG-103529-23
ROTH Accounts	Distributions not counted toward RMDs during employee's lifetime	Prop Regs – REG-103529-23
Annuity / Account Aggregation	Rules for valuing and aggregating for RMD purposes	Prop Regs – REG-103529-23
Trust Beneficiaries	Separate application of RMD rules for outright distributions to trust beneficiaries	Prop Regs – REG-103529-23
Effective Date	Generally, for RMDs for calendar year on or after 1/1/2025	Prop Regs – REG-103529-23

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Polling Question #5



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Retirement / IRA Distribution Planning ... New **PROPOSED** Regulations ... SECURE 2.0 Act ...



- Spousal Election for RMDs under SECURE 2.0 Act §307
- Background
- Key Provisions in the Proposed Regulations
 - Automatic Application for Pre-RBD Deaths
 - Optional Election for Post-RMD Deaths
 - Effect on RMD Calculations
 - Applicability Date
 - No Effect on Other Rules
- Uniform Lifetime Table Update
- Subsequent Delay in Effective Date ... IRS Announcement 2025-2 ... *will not apply before the 2026 distribution calendar year ...*
- Practical Implication ... For 2025 ... the new regulatory rules for the spousal election are yet in effect. Taxpayer may rely on the statutory language of IRC §401(a)(9)(B)(iv) as amended by SECURE 2.0 Act ...

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- The final regulations retain:
 - *The see-through concept to identify beneficiaries*
 - *The conduit and accumulation trust concept*
 - *The four requirements for a trust to be a qualified designated beneficiary*
- The regulations also provide additional guidance regarding identifying beneficiaries with new fact pattern examples

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- IRA Trusts ... Final Regulations under IRC §401(a)(9) ...
 - Requirements for a Trust to be a “Designated Beneficiary”
 - **Trust is valid under state law** (Treas Regs §1.401(a)(9)-4(f)(2)(i))
 - **Trust is irrevocable upon death of owner** (Treas Regs §1.401(a)(9)-4(f)(2)(ii))
 - **Beneficiaries of the trust are identifiable from the trust instrument** (Treas Regs §1.401(a)(9)-4(f)(2)(iii))
 - **Documentation requirement is satisfied** (Treas Regs §1.401(a)(9)-4(f)(2)(iv) ...
 - **Reference to paragraph (h) ... Documentation requirements for trusts ... October 31st following death of IRA owner**

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- The final regulations retain conduit trusts
- The preamble clarifies that a trust which merely provides a unilateral withdrawal right to a beneficiary is insufficient to qualify as a conduit trust – *distributions from the plan, upon receipt by the trustee, must be paid directly to the beneficiary*
- May need to review any [IRC §678](#) (Grantor trust provision) planning and make appropriate changes

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- The final regulations expand the exception in the proposed regulations to permit separate application of IRC §401(a)(9) to separate interests of beneficiaries of a see-through trust
 - Requirements –
 - Funding trust is terminated
 - Separate interest held in separate trusts
 - No discretion as to the extent of which of the separate trusts will be entitled to the retirement accounts
 - Administrative delay between the date of death and the actual division or termination is permissible
 - Allocations amongst the sub-trusts must be consistent with the division which would have occurred on the date of death

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- Documentation requirements
 - Plan administrators or IRA custodians must either receive
 - A copy of the actual trust instrument, or
 - A list of the trust beneficiaries (including contingent beneficiaries), with a description of the conditions on their entitlement sufficient to establish who are the beneficiaries
 - In the preamble to the final regulations the Treasury rejected a trustee to just certify a list of beneficiaries
 - The final regulations note that the plan administrator may choose which option of documents that will be accepted

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- Certain beneficiaries may be disregarded ... conditioned on the death of a beneficiary (Rule #1)
 - A beneficiary that could receive retirement assets solely because of the death of another beneficiary can be disregarded
 - Applies to accumulation trusts; that is, the trust can accumulate benefits for disregarded beneficiaries
 - The current beneficiary cannot pre-decease the IRA owner (plan beneficiary/employee) for the residuary beneficiary to be disregarded
 - Meant to exclude minimal interests
 - The preamble to the final regulations reinforces that all primary beneficiaries must be considered – specifically, Treasury rejected a commentator’s suggestion that a beneficiary only currently entitled to sprinkling distributions should be disregarded

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Retirement / IRA Distribution Planning ... Final RMD Regulations – *Trusts as Beneficiaries*



- See-through trust beneficiaries disregarded - **EXAMPLE**

IRA trust provides: (1) first to surviving spouse, (2) then to brother, if he’s alive, at the spouses death, and (3) then to charity.

In this case, the brother is only entitled to a residual interest and the charity is entitled to only what remains thereafter – so the charity can be disregarded.

The charity would be counted if the brother’s interest was not subject to any contingences or contingent on an event other than the surviving spouse’s death.

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Retirement / IRA Distribution Planning ... Final RMD Regulation – Trusts as Beneficiaries



- Certain beneficiaries may be disregarded ... entitlement conditioned on death of young individual (Rule #2)
 - If a trust provides for full distribution by the calendar year following the death, any beneficiary whose sole entitlement is contingent on the primary beneficiary's death can be disregarded
 - If a trust provides for a minor beneficiary, any beneficiary whose sole entitlement is contingent on the primary beneficiary's death within 10-years of reaching the age of majority can also be disregarded
 - Designed to exclude remote interests

Retirement / IRA Distribution Planning ... Final RMD Regulations – *Trusts as Beneficiaries*

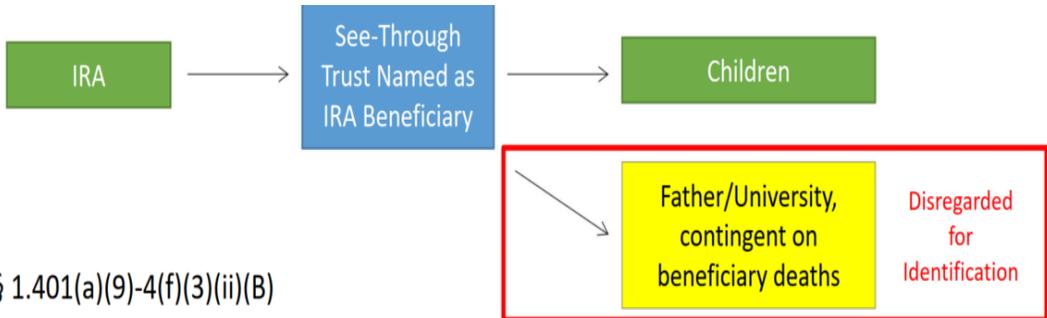


- See-through trust beneficiaries disregarded – **EXAMPLE**
 - Your client is a 50-year-old attorney, recently divorced and dies in a plane crash
 - She accumulated \$500,000 in her qualified plan and you recommended a testamentary stand-alone IRA trust as part of her estate plan
 - She leaves behind a 17- and 14-year-old son and daughter, respectively who are beneficiaries of the trust
 - Since she had no other primary beneficiaries, she selected her 75-year-old Father as the contingent beneficiary, in the event both children were not beneficiaries, and thereafter the trust would be payable to her college alma mater

Retirement / IRA Distribution Planning ... Final RMD Regulations – *Trusts as Beneficiaries*



- See-through trust beneficiaries disregarded – **EXAMPLE**



Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B)

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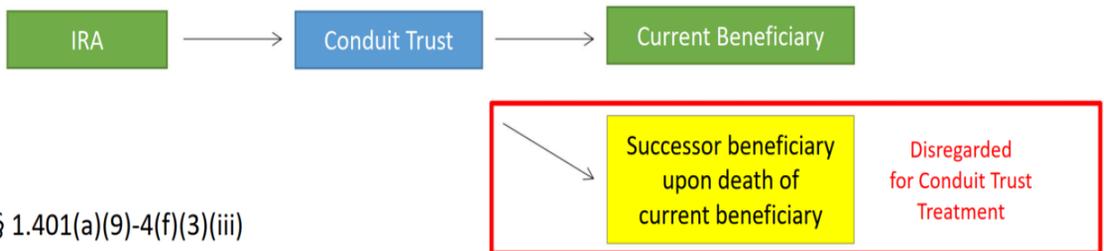
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Retirement / IRA Distribution Planning ... Final RMD Regulations – *Trusts as Beneficiaries*



- Conduit trusts allowed to incorporate terms for certain accumulations
 - A trust will not fail to be treated as a conduit trust merely because the trust terms requiring the direct payment of amounts received from the plan do not apply after the death of all the current beneficiaries



Treas. Reg. § 1.401(a)(9)-4(f)(3)(iii)

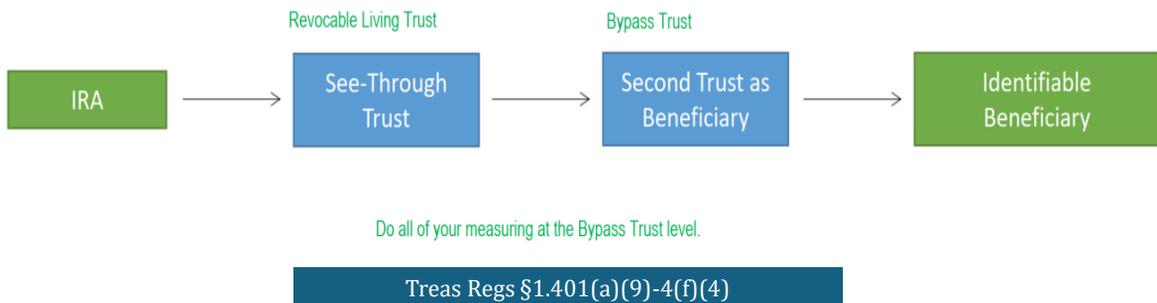
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Retirement / IRA Distribution Planning ... Final RMD Regulations – Trusts as Beneficiaries



- Multiple Trust Arrangements

- If a beneficiary of a see-through trust is another trust, the beneficiaries of the second trust will be treated as beneficiaries of the **first** trust, as long as the second trust is a **Qualified Designated Beneficiary**



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Retirement / IRA Distribution Planning ... Final RMD Regulations – Postmortem Distributions



- Distribution of Entire Interest Required on the **Earliest of the following:**
 - End the 10th year following the calendar year in which the employee died if the designated beneficiaries is not an **Eligible Designated Beneficiary**
 - End the 10th year following the calendar year in which the designated beneficiary died, if the designated beneficiary is **not an Eligible Designated Beneficiary**
 - End the 10th year following the calendar year in which the beneficiary reaches the age of majority if the designated beneficiary was a minor child **Eligible Designated Beneficiary**
 - End the 10th year following the calendar year in which the applicable denominator is less than or equal to 1.0, if the life expectancy distributions apply

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Retirement / IRA Distribution Planning ... Final RMD Regulations – Postmortem Distributions



- The general rules are maintained -

	Eligible DB	Qualified DB	No Qualified DB
Death Before RBD	EBD's Life Expectancy Annual RMDs	10-Year Rule (No Annual RMDs)	5-Year Rule (No Annual RMDs)
Death After RBD	EBD's Life Expectancy Annual RMDs	Life Expectancy Annual RMDs & the 10-Year Rule*	Ghost Life Expectancy Annual RMDs

*Annual RMDs may not be required for Roth IRAs & the greater of decedent's or DB's life expectancy is used

Treas. Reg. § 1.401(a)(9)(E)(ii)(IV)

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Retirement / IRA Distribution Planning ... Common Rollover Mistakes



- Taking multiple IRA distributions and believing they can be combined into a single rollover (**Mistake #1**)
 - A person is only permitted to do one 60-day IRA-to-IRA (or Roth IRA-to-IRA) rollover of a single distribution received in any 12-month period
 - With multiple distributions, only one of them may be rolled over within 60 days
 - The other distributions must remain as withdrawals and will be subject to whatever taxes and/or penalties that apply
 - **REMEMBER ... IRA – to Plan rollovers do not count against the one-rollover-per year rule!**

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Retirement / IRA Distribution Planning ... *Common Rollover Mistakes*



- Not taking a plan RMD before rollover to an IRA (**Mistake #2**)
 - Workers often retire in the year they turn age 73 (or older) and wish to rollover their IRC §401(k) fund to an IRA rollover
 - This conclusion is further complicated by the fact that RMDs do not begin until the April 1st following the age 73 year
 - April 1st is considered the employee's required beginning date (RBD)
 - **What is the real rule** ... An RMD for the year of retirement is required before a rollover can be completed
 - Or stated another way ... The first distribution amount from a qualified plan account balance in a year that RMDs are required (participant reached age 73) is treated as RMD
 - **CAUTION** – *If the RMD is rolled over, it is considered an excess contribution. The FIX ... excess contributions, along with earnings or losses attributable to the excess amount can be returned without penalty by October 15 of the year following the year the excess contribution was made!*

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Retirement / IRA Distribution Planning ... *Common Rollover Mistakes*



- Non-Spouse beneficiary attempting a 60-day rollover (**Mistake #3**)
 - Non-spouse beneficiaries cannot do 60-day rollovers with inherited IRA dollars
 - After the funds are inherited, the beneficiary often take a total distribution, generally done without professional guidance or lack of understanding of the income tax consequences
 - This is clearly an innocent mistake since the non-spouse beneficiary may believe that this is only way the funds can be moved
 - **Unfortunately, the mistake cannot be fixed; ignorance of the tax law is NOT an excuse**
 - The distribution is subject to federal and state, if applicable, income taxes and quite possibility subject to the IRC §72(t) additional tax
 - Understanding the options when inheriting an IRA is extremely important
 - If the beneficiary desires to relocate the funds to a different investment arrangement, **funds can only be moved via direct trustee-to-trustee transfer from one inherited IRA to another inherited IRA (direct transfer rules are not subject to the 60-day rollover provisions)**

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Polling Question #6



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Questions?



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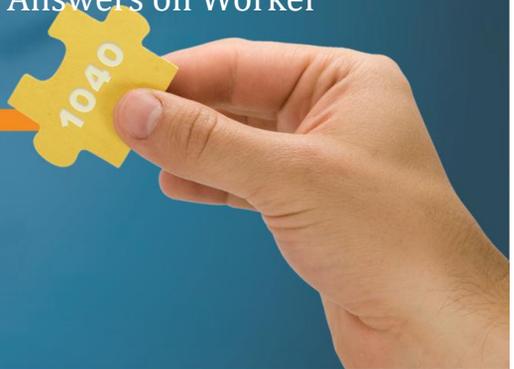
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Upcoming Webinars

- Ethics: Part 1 (11/11) - 1pm-2pm ET - Maitre
- Ethics: Part 2 (11/11) - 2:30pm-3:30pm ET - Maitre
- Tax Issues surrounding Sale of Fixed Assets (11/12) - 2pm-3pm ET - Johnson
- Is that Worker an Employee? Questions and Answers on Worker Classification (11/13) - Noon-2pm - DeBlis

Monthly Newsletter: cpehours.com/about/blog

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