ADVANCED ESTATE PLANNING FOR IRA AND QUALIFIED PLAN BALANCES

FOR

ABA NATIONAL GRADUATE TRUST SCHOOL

BY

RICHARD S. FRANKLIN

Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1128
Telephone: (202) 663-8000
Facsimile: (202) 663-8007

Table of Contents

Table of Contents
(continued)

Page

Table of Contents
(continued)

Page

ADVANCED ESTATE PLANNING
FOR IRA AND QUALIFIED PLAN BALANCES
by
Richard S. Franklin

I. TERMS USED

- **Determination Date** means the date that is September 30th of the calendar year following the calendar year of the owner's death, at which time the Designated Beneficiaries are determined (discussed at III.F.).
- **EGTRRA** means the Economic Growth and Tax Relief Reconciliation Act of 2001.
- **Final Regulations** means the final regulations under Section 401(a)(9) issued by the Internal Revenue Service on April 16, 2002, and published, on April 17, 2002,. Treas. Reg. § 1.401(a)(9)-1 *et seq.*, 67 FR 19131 *et seq.* (2002).[1]
- **IRA Agreement** means the controlling IRA trust agreement or custodial account agreement with the IRA provider.
- **IRA owner** means a person that originally establishes an IRA by contributions or by rollover from a qualified plan. A surviving spouse that inherits an account from a deceased spouse and elects to rollover the account (i.e., spousal rollover) is treated as an IRA owner for this purpose. Otherwise, a person who inherits an account is not an IRA owner for this purpose.

[1] Preceding the final regulations, on January 11, 2001, the IRS issued the regulations in proposed form. Prop. Treas. Reg. § 1.401(a)(9), 66 Fed. Reg. 3928-54 (2001). These new proposed regulations were the first major rewrite of the old proposed regulations first issued in 1987 and greatly simplified the minimum distribution rules. Corrections to the new proposed regulations came close on the heels of the January 17, 2001 publication in the Federal Register. Corrections to REG 130477-00 & REG 130481-00, 66 Fed. Reg. 10981 (February 21, 2001). The timing of the new proposed regulations provided insight into the driving force behind them. On September 19, 2000, House Representative E. Clay Shaw, Jr. (R-FL) introduced a detailed bill addressing many of the same issues the new proposed regulations would later address. *Debt Relief and Retirement Security Reconciliation Act,* H.R. 5203. CPH, 106th Cong. (2000). This bill was generally viewed as something on which both parties agreed, as evidenced by the fact that it was passed by the House on the same day it was introduced, by a vote of 401-20. *See* CONG. REC., 146 H7780-98 (SEPTEMBER 19, 2000). Within two days of introduction, the bill was passed in the House, read twice in the Senate, and placed on the Senate Calendar. The bill provided for a "fresh start" such that persons who had made unfortunate irrevocable elections under the existing rules could go back and fix their mistakes within a certain statutory window of time. Probably more interesting to the Service, however, was a requirement in the bill that the IRS finish what it started and issue final regulations on the MRD requirements once and for all, to be effective for tax years after December 31, 2000. It appears that, barring an unusual coincidence, the Service's new proposed regulations were motivated less by a sense of fairness or regulatory responsibility than by a desire to derail a Congressional mandate to fix the problem and a hope to avoid egg on the face.

- **IRD** means income in respect of a decedent as defined in IRC § 691.
- **MRD** means the minimum required distribution under IRC § 401(a)(9).
- **RBD** means the required beginning date under IRC § 401(a)(9)(C) (discussed at III.B.).
- **ULT** means the Uniform Lifetime Table (attached as Appendix D) (discussed at II.A.).

II. MRD RULES DURING THE OWNER'S LIFETIME

A. Uniform Lifetime Table

Beginning in 2003, all IRA owners (with one exception) must use a new Uniform Lifetime Table (See Appendix D) to calculate minimum required distributions. Reg. § 1.401(a)(9)-5, Q&A A-4(a). The ULT is found in Reg. § 1.401(a)(9)-9, Q&A A-2.

The ULT is based upon the joint life expectancies of the IRA owner and a hypothetical beneficiary ten years younger. The ULT provides the IRA owner with a divisor for each year beginning at age 70, determined as if the owner and the hypothetical beneficiary ten years younger were recalculating their joint life expectancies.

B. The One and Only Exception to the Uniform Distribution Period for Distributions During the Owner's Lifetime

The final regulations provide that the ULT is to apply in determining MRDs during the owner's lifetime, unless the owner's spouse is the sole designated beneficiary. In that case, the applicable distribution period is the longer of (i) the distribution period determined under the ULT or (ii) the joint life expectancy of the owner and spouse using their attained ages as of their birthdays in the distribution calendar year. Reg. § 1.401(a)(9)-5, Q&A A-4(b). Recalculation is mandated for purposes of determining the joint life expectancy of the owner and spouse (i.e., looking in the table each year). In practice, the recalculated joint life expectancy of the owner and spouse will always result in a lower MRD than the ULT if the spouse is more than 10 years younger. The relevant part of the joint life expectancy table is shown in Appendix D.

The spouse is considered the sole designated beneficiary for a distribution calendar year during the owner's lifetime if the spouse is the sole beneficiary of the owner's entire interest at all times during the distribution calendar year. Reg. § 1.401(a)(9)-5, Q&A A-4(b). The spouse is considered the "spouse" if the spouse is the spouse on January 1.

The spouse is considered the sole beneficiary for the entire year if the owner does not change the designated beneficiary before the end of the year, or before the spouse's death, if death occurs during the year. Interestingly, the wording of the regulations means that the owner is allowed to change his beneficiary the day after his spouse dies

without losing the ability to use the spouse's life expectancy for the year of the spouse's death. However, the owner would lose the ability to use the spouse's life expectancy if the owner changed the beneficiary during a year in which the owner and spouse divorce. Reg. § 1.401(a)(9)-5, Q&A A-4(b) 1&2.

C. Substantial Equal Periodic Payments - Rev. Rul. 2002-62 (October 3, 2002).

This new Revenue Ruling addresses the future of substantial equal periodic payments under Section 72(t)(2)(A)(iv) of the Internal Revenue Code and the ability to modify these payments. Section 72(t) imposes an a 10% penalty on a distribution prior to age 59½. Section 72(t)(2)(A)(iv) provides an exception to this early withdrawal penalty tax if the distribution is part of a series of substantial equal periodic payments. Rev. Rul. 2002-62 modifies Q&A-12 of Notice 98-25, which set forth three methods of determining whether payments to individuals from their IRAs or, if they have not separated from service, from their qualified retirement plans constitute a series of substantially equal periodic payments for purposes of Section 72(t)(2)(A)(iv). Rev. Rul. 2002-62 is effective for any series of payments commencing on or after January 1, 2003, and may be used for distributions commencing in 2002. If a series of payments commenced in a year prior to 2003, the owner may change to the new required minimum distribution method described in Rev. Rul. 2002-62, including use of a different life expectancy table.

III. POSTMORTEM PLANNING

For a variety of reasons, there is an increasing need to be familiar with the postmortem administrative and planning options for IRAs. For instance, the regulatory rules applicable to the distribution of IRAs are changing; IRAs are reaching staggering values; and IRA owners are growing older. This section provides a practical review of some of the areas of concern following the death of an IRA owner.

It is critical to review the IRA planning quickly after an IRA owner's death. Review the controlling IRA trust agreement or custodial account agreement, the beneficiary designation in effect upon the owner's death, as well as any distribution election in effect for the account. If the owner was beyond his RBD, ensure that the MRD for the year of the owner's death is made prior to the close of the calendar year.

Remember that many of the postmortem options are time sensitive. For example, if the children are named beneficiaries and the owner dies prior to his or her RBD, distribution of the account may be made over the life or life expectancy of the designated beneficiary, but only if payments commence by December 31 of the year following the owner's death. Consider the timing of a spouse's election to treat the account as his or her own. Also, remember that disclaimers (i.e., qualified disclaimers under Section 2518), the importance of which cannot be overstated in planning the distribution of large accounts,

have to be considered and implemented within nine months following the owner's death. *See e.g.*, PLR 9630034. The Timeline attached as Appendix B highlights important deadlines.

A. Obtain Relevant Documentation for Account

Following the IRA owner's death, the first step is to obtain certain information about the IRA to properly plan and administer the account post-death. For starters, obtain a copy of the IRA agreement. This is the underlying agreement with the financial institution providing the IRA (IRA provider). This step should not be overlooked. The IRA agreement will provide helpful insight on postmortem planning options, including often overlooked points such as whether the beneficiary can name his or her own beneficiary and whether the beneficiary may change the investments or IRA provider.

Also needed is a copy of the beneficiary designation in effect upon the owner's death. From this information it is normally possible to ascertain the identity of the beneficiary and what must be distributed from the account, and when it must distributed, under the minimum distribution rules.

It is also necessary to review the deceased owner's will and trusts to determine if they may impact the beneficiary designation for the IRA. For example, in *Goter v. Brown*, 21 F.L.W. D1257 (Fla. 4th DCA 1996), a Florida appellate court found that the residuary clause in the decedent's will that read "the rest, residue and remainder of my property … including stocks, bonds and other financial securities held in brokerage accounts" was effective to countermand the designated beneficiary in IRA account documents. To be certain the IRA property passes to the named beneficiary without challenge by probate estate beneficiaries or others, consider in the planning phase whether the beneficiary designation should comply with the applicable state statute relating to the execution of wills.

B. Did the Owner Reach His RBD?

One of the major demarcation points for determining the postmortem distribution options for an IRA is whether the owner reached the required beginning date ("RBD") prior to death. It is at the RBD that the owner must distribute the IRA in a lump sum or must begin to distribute the IRA ratably over the life expectancy of the owner (and perhaps the owner's designated beneficiary). IRC § 401(a)(9)(A).

1. IRAs

The RBD for a traditional IRA is April 1st of the calendar year following the year in which the owner attains the age of 70½. IRC § 401(a)(9)(C); Reg. § 1.401(a)(9)-2, Q&A A-2(a). The minimum required distribution ("MRD") rules that are applicable to a traditional IRA are not applicable to a Roth IRA until after the owner's death. IRC

§ 408A(c)(5) states that IRC § 401(a)(9)(A) (i.e., the section requiring MRDs to begin on the RBD) does not apply to Roth IRAs. Thus, the owner of a Roth IRA is not required to take any distributions during his lifetime.

2. Qualified Plans

The RBD is defined differently for qualified plans. If the employee has not retired by age 70½, the employee may wait until retirement from active employment to begin distributions from his or her qualified plan. Reg. § 1.401(a)(9)-2, Q&A A-2(a). However, this special rule does not apply if the employee is a 5% or greater owner of the employer. IRC § 401(a)(9)(C); Reg. § 1.401(a)(9)-2, Q&A A-2(b).

C. First Distribution Year

Although the RBD is April 1st of the year following the year the owner attains age 70½, the owner's first distribution year is the calendar year in which the owner attains age 70½. The owner, however, may defer taking the MRD for the first distribution year into the following year, up to the April 1st RBD. Reg. § 1.401(a)(9)-5, Q&A A-1(b). Taking advantage of this extra three months of deferral is typically unwise because the MRD for the RBD year would also have to be made by December 31st of that year, which would bunch two MRDs into one calendar year and perhaps push the owner into a higher income tax bracket.

D. Death After First Distribution Year and Before RBD

A frequent area of concern involves the situation in which the owner lives beyond January 1st of the year the owner would attain age 70½ but dies prior to April 1st in the year of the RBD. Must the MRD for the first distribution year be taken by the beneficiary? Must the MRD for the year of the RBD be taken by the beneficiary? Uncharacteristically in the law of IRAs, the Code provides clear answers to these questions. IRC § 401(a)(9)(B)(ii) provides that if the owner's death is before the RBD, no MRDs for the deceased owner are required because the Five-Year Rule and Life Expectancy Rules apply and the At Least as Rapidly Rule does not apply. It is only under the At Least as Rapidly Rule that an MRD of the deceased owner could be required and that rule clearly does not apply to any owner whose death occurs prior to the RBD. Reg. § 1.401(a)(9)-2, Q&A A-6(a).

E. MRD for Year of Owner's Death

If the owner dies on or after his RBD, ensure that the MRD for the year in which the owner's death occurs is made before the close of the calendar year, otherwise penalties may apply. The MRD for the year of the owner's death is always calculated as if the owner was alive. A common mistake is to distribute the MRD for the year of the owner's death to the owner's estate, as if the estate some how succeeds to the owner's

right to that MRD. It does not. After the owner's death, any MRD from the IRA should be made to the beneficiary, even the MRD for the year in which the owner's death occurs. Reg. § 1.401(a)(9)-5, Q&A A-4(a).

F. Determine if there is a Designated Beneficiary

Another major demarcation point for determining the postmortem distribution options for an IRA is whether the IRA owner had a "designated beneficiary." The beneficiary of the IRA and the designated beneficiary are distinct concepts, the latter being a term of art. The beneficiary of the IRA is that person who under the IRA agreement and state law will be entitled to the IRA benefits following the owner's death. The designated beneficiary is the person entitled to receive at least part of the owner's benefits contingent on the owner's death or some other event, and *whose life expectancy can be used to determine the payout period under IRC § 401(a)(9)*. Reg. § 1.401(a)(9)-2, Q&A A-1(a). Only an individual may be a designated beneficiary. An estate or charity may not be a designated beneficiary, but certain trusts named as beneficiary can provide a designated beneficiary (and related life expectancy). Reg. § 1.401(a)(9)-4, Q&A A-1, A-5.

The Designated Beneficiaries are those beneficiaries designated as of the owner's death who remain beneficiaries as of September 30th of the calendar year following the calendar year of the owner's death (the "Determination Date"). The owner is free to change beneficiaries at any time during his lifetime, before or after the RBD.[2] Any person who is a Designated Beneficiary as of the date of the owner's death, but is not a beneficiary as of the Determination Date, is not taken into account in determining the Designated Beneficiary. Reg. § 1.401(a)(9)-4, Q&A A-4(a). An IRA account agreement may not, however, allow a person to have the discretion to change an IRA owner's beneficiaries after the IRA owner's death, otherwise the owner will be treated as not having a Designated Beneficiary. Reg. § 1.401(a)(9)-4, Q&A A-1.

The following post-mortem planning opportunities are available as a result of the rule that persons who are no longer Designated Beneficiaries as of the Determination Date are disregarded.

1. Disclaimer

Beneficiaries that disclaim their interest prior to the Determination Date are disregarded. Reg. § 1.401(a)(9)-4, Q&A A-4(a). Note that for this purpose the disclaimer must be a qualified disclaimer pursuant to Section 2518. For example, assume that Jane's IRA beneficiary designation names her daughter, Lisa, otherwise Lisa's son, Tom, as beneficiaries. Jane died in May, 2004. Lisa is independently wealthy, and does not need or want the additional income the account would be required to distribute to her.

[2] *See* PLR 200221048 (new beneficiary named after RBD treated as Designated Beneficiary).

Tom, on the other hand, could use the extra income. Lisa could disclaim her interest in the IRA, and Tom would receive the entire account. The new rules are not concerned with Lisa's and Tom's motives, the rules are concerned with who the beneficiary is at the Determination Date. Assuming Lisa disclaims her interest (if she makes a timely disclaimer under Section 2518 within 9 months of Jane's death, which will by definition occur by the Determination Date), and further assuming nothing happens to Tom, Tom will be the account beneficiary on the Determination Date. Tom's life expectancy will determine the MRDs, as discussed below. Because Tom is younger than Lisa, greater deferral has been achieved (though there may be GST implications).

2. Full Distribution

Beneficiaries that receive the entire benefit to which they were entitled prior to the Determination Date are disregarded. For example, assume Jane designated Lisa and XYZ Charity as equal beneficiaries. The inclusion of the charity results in the treatment of the account as having no Designated Beneficiary. If the charity's share is fully distributed to the charity prior to the Determination Date, distributions could be based on Lisa's life expectancy. This planning could be combined with the disclaimer planning noted above for further flexibility. If the charity is timely paid its full share, and Lisa timely disclaims, Lisa's son, Tom, could effectively be left with the account, and MRDs could be based on Tom's life expectancy.

3. Separate Accounts

After the owner's death and prior to the Determination Date, separate accounts may be created to enable qualification as a designated beneficiary. For example, assume Lisa, Tom and XYZ Charity are named as equal beneficiaries. The account could be split into three separate accounts post-death. As long as the split is complete by the Determination Date, Lisa, Tom, and XYZ Charity would each be the beneficiaries of their own respective accounts. XYZ Charity would likely withdraw the full balance of its account, as it is not concerned with income taxes. Lisa's and Tom's respective MRDs for their respective accounts will be determined using their respective life expectancies. Separate account treatment is discussed more fully above.

G. No Adding Beneficiaries

The Designated Beneficiaries will be those beneficiaries who were named beneficiaries as of the owner's death, and who remain beneficiaries as of the Determination Date. Beneficiaries may be eliminated after death, but not added. Reg. § 1.401(a)(9)-4, Q&A A-1.

H. Death of the Designated Beneficiary

For purposes of determining the Designated Beneficiary, an individual beneficiary alive on the owner's death continues to be treated as a beneficiary on the Determination Date even if the individual beneficiary dies prior to the Determination Date. Reg. § 1.409(a)(9)-4, Q&A A-4 (c). Successor beneficiaries to the deceased beneficiary are ignored for this purpose. For example, assume that Jane designated her grandson, Tom, as her primary beneficiary and her daughter Lisa as her contingent beneficiary. Tom survives Jane, but dies prior to the Determination Date. Tom's life expectancy is used to determine the MRDs that will be payable to the successor beneficiary Lisa.

I. Postmortem Minimum Required Distribution Rules

Following the IRA owner's death, there are four rules that govern the remaining payout of the account: (1) Life Expectancy Rule, (2) Spousal Life Expectancy Rule, (3) Five-Year Rule, and (4) Owner Life Expectancy Rule. The Life Expectancy Rule and Spousal Life Expectancy Rule apply where there is a Designated Beneficiary. The Five-Year Rule applies if there is no Designated Beneficiary and the owner's death occurs prior to the RBD. The Owner Life Expectancy Rule applies if there is no Designated Beneficiary and the owner's death occurs on or after the RBD.

1. Life Expectancy Rule

The Life Expectancy Rule is available to allow distribution of the IRA over the life expectancy of a non spouse Designated Beneficiary, if the owner dies before the RBD, or over the longer of the life expectancy of the non spouse Designated Beneficiary or owner, if the owner dies after the RBD. In either case, this rule establishes a fixed distribution period (i.e., you consult the life expectancy table once).

2. Death Before RBD

When the owner dies before the RBD, in order to qualify for the Life Expectancy Rule, the final regulations provide that payments to a Designated Beneficiary must commence by 12/31 of the year following the year of the owner's death. Reg. §1.409(a)(9)-3, Q&A A-3(a). The first year's divisor is determined by using the Designated Beneficiary's age as of the Designated Beneficiary's birthday in the year following the year of the owner's death. Reg. §1.409(a)(9)-5, Q&A A-5(b), (c)(1). The single life expectancy table of Reg. §1.409(a)(9)-9, Q&A A-1 (see Appendix D.) contains the divisors used for this purpose. In subsequent years, the fixed period is reduced by one for each year that has elapsed since the year following the year of the owner's death. Reg. §1.409(a)(9)-5, Q&A A-5(c)(1).

For Example: Assume the owner dies at age 50 on January 31, 2002, and the owner's Designated Beneficiary is Child A, and Child A desires to receive the IRA over Child A's life expectancy. The date on which distributions are required to commence to Child A is December 31, 2003. Child A's life expectancy is calculated based on Child A's attained age as of Child A's birthday in calendar year 2003. Assuming Child A's attained age in 2003 is 25, Child A's MRD would be based on a divisor of 58.2 (i.e., Child A must distribute 1/58.2 (see Appendix D.) of the 12/31/02 balance of the account). In 2004, Child A must distribute 1/57.2 of the account, and in 2005 Child A must distribute 1/56.2, and so on.

3. Death After RBD

When the owner dies on or after the RBD and has a Designated Beneficiary, the applicable distribution period for years after the year of the owner's death is the longer of the remaining life expectancy of the Designated Beneficiary or the owner. Reg. §1.409(a)(9)-5, Q&A A-5(a)(1). For this purpose, the Designated Beneficiary's life expectancy is determined in the same manner described above for when the owner dies prior to the RBD. The remaining life expectancy of the owner is determined using the age of the owner on the owner's birthday in the year of the owner's death (whether or not the owner actually survives to his or her birth date). Reg. §1.409(a)(9)-5, Q&A A-5(a)(1)(ii), A-5(c)(3).

4. Spousal Life Expectancy Rule

If the surviving spouse is the **sole** Designated Beneficiary of the IRA, the special Spousal Life Expectancy Rule is available to allow distribution of the IRA over the life expectancy of the spouse. Under the Spousal Life Expectancy Rule, the spouse can postpone distributions to the later of (i) 12/31 of the year following the year of the owner's death, or (ii) 12/31 of the calendar year in which the owner would have reached age 70½. Reg. § 1.401(a)(9)-3, Q&A A-3(b).

Example: Assume the owner dies at age 60 on January 31, 2002, the owner's sole Designated Beneficiary is the owner's spouse, and the spouse elects to receive the IRA over the spouse's life expectancy. The owner would have reached age 70½ in 2012. The date on which distributions are required to commence to the spouse is December 31, 2012.

While the spouse is alive, the divisors are determined by using the spouse's age as of the spouse's birthday in each year that a distribution is required. This means that the Single Life Expectancy Table under the regulations (see Appendix D.) is consulted each year to determine the appropriate divisor (this is recalculation of life expectancy, which is permitted in this case). Reg. § 1.401(a)(9)-5, Q&A A-5(c)(2).

After the spouse's death, any balance in the account is distributed using a fixed distribution period established based on the age of the spouse as of the spouse's birthday in the year of the spouse's death, reduced by one for each subsequent year (this is not recalculation). In effect, the rule is switched at the spouse's death to the non spouse Life Expectancy Rule. Reg. § 1.401(a)(9)-5, Q&A A-5(c)(2).

Note that if the spouse is not the **sole** Designated Beneficiary, the regular Life Expectancy Rule applies, and the special rules do not (i.e., no recalculation and no delay until year owner would have reached age 70½). If this is a concern, consider the post-mortem technique described above to create a separate account over which the spouse is the sole Designated Beneficiary.

5. Five-Year Rule

The Five-Year Rules applies if the owner dies prior to the RBD and either (i) the account does not have a Designated Beneficiary (Reg. § 1.401(a)(9)-3, Q&A A-4(a)(2)) or (ii) the Designated Beneficiary elects Five-Year Rule treatment, if the plan allows such an election (Reg. § 1.401(a)(9)-3, Q&A A-4(c)). The Five-Year Rule requires full distribution prior to December 31st of the calendar year which contains the fifth anniversary of the date of the owner's death.[3] Reg. § 1.401(a)(9)-3, Q&A A-2.

[3] A special transition rule in the final regulations allowed a beneficiary taking MRDs under the 5-year rule, if the plan (or account agreement) allowed, to switch to the Life Expectancy Rule by December 31, 2003. This valuable planning opportunity was available for beneficiaries of any deceased owner who (i) died in the years 1997-2001, and (ii) died before the RBD, where the beneficiaries did not, under the old rules, qualify for the Life Expectancy Rule. In many of these cases, the beneficiaries, believing they had five years to distribute the account, were simply delaying as long as possible, and their procrastination

For Example: If an owner dies on January 1, 2003 prior to the RBD and without a Designated Beneficiary, the entire interest must be distributed by to December 31, 2008. Therefore, the actual period of time allowed by the regulations to distribute the IRA under the Five-Year Rule will always be greater than five years, unless the owner dies on December 31st.

The Five-Year Rule only applies in cases when the owner dies before the RBD. Once the RBD has occurred, the Five-Year Rule can never apply.

In the event of the owner's death prior to the RBD where a Designated Beneficiary exists, the Life Expectancy Rule rather than the Five-Year Rule is the default payout rule. Reg. § 1.401(a)(9)-3, Q&A A-4(a)(1). If the Designated Beneficiary takes no distributions until, say, year four, at which time he empties the account, will he be subject to penalties for failing to elect out of the Life Expectancy Rule and failing to take MRDs for years one through three? No. Penalties will not be assessed for the Designated Beneficiary in this case as long as the full distribution is made consistent with the Five-Year Rule. Reg. §54.4974-2, Q&A A-7(b).

6. Owner Life Expectancy Rule

If the owner dies on or after the RBD and there is no Designated Beneficiary, MRDs following the owner's death are based on the remaining actuarial life expectancy of the owner as determined in the year of death, reduced by one for each subsequent year (this is not recalculation). For this purpose, the life expectancy of the deceased owner is determined under the Single Life Expectancy Table under the final regulations. Reg. § 1.401(a)(9)-5, Q&A A-5(c)(3). Thus, the Owner Life Expectancy Rule is essentially the same as the Life Expectancy rule, except that, because there is no Designated Beneficiary, the owner's life expectancy is used.

7. Spousal Rollover and Election To Treat As Spouse's Own Account

The one big exception to the post death rules addressed above is the ability of a surviving spouse to rollover accounts and elect to treat an inherited IRA his or her own

---

may have paid off. The final regulations allowed them to catch up by December 31, 2003 the MRDs that would have been required under the Life Expectancy Rule as if they had been taking under that rule (presumably without penalty). Going forward, these beneficiaries will continue to take MRDs under the Life Expectancy Rule.

IRA. A surviving spouse of an owner of a qualified plan account may generally roll over any distribution from the plan to an IRA (or to any "eligible retirement plan" for the spouse's benefit) in the same manner as the account owner could. IRC § 402(c)(9). Likewise, a surviving spouse (and only a surviving spouse) of an IRA owner may roll over any amount distributed from the IRA to another IRA. IRC § 408(d)(3)(c)(ii)(II).

In order elect to treat an inherited IRA his or her own IRA ("spousal election"), the spouse must be the sole beneficiary and have the unlimited right to withdraw amounts from the account. The spousal election is not available through a trust, even a trust of which the spouse is the sole beneficiary. Reg. § 1.408-8, Q&A A-5(a).

The spousal election can occur at any time after the owner's death. If the election occurs in the year of the owner's death, the spouse is not required to take an MRD for that year as an owner. Instead, the spouse must take the deceased owner's MRD to the extent such distribution was not made to the owner prior to death. If the election occurs in a year after the year of the owner's death, the MRDs for the year of the election and each subsequent year would be determined for the spouse as the owner.

To implement the election, the spouse can simply re-designate the owner's IRA by naming the spouse as the owner of the account rather than the beneficiary. Otherwise, the election is deemed to occur upon the spouse failing to take an MRD as a beneficiary or contributing amounts to the account. Reg. § 1.408-8, Q&A A-5(b).

a. Rollover Quickly

Generally, the surviving spouse will want to implement the rollover quickly and name new beneficiaries to obtain the longer stretch out. The risk with waiting is that if the spouse dies before the rollover is actually implemented, then it's too late. In PLR 9237038, the Service held that the personal representative of the surviving spouse was not allowed to exercise the spouse's right to rollover the IRA.

A surviving spouse who is younger than age 59½ has reason to consider delaying the rollover. Distributions to the surviving spouse as the new "owner" when under age 59½ would be subject to the 10% early withdrawal penalty tax under IRC § 72(t). Distributions to the surviving spouse as a "beneficiary", however, even if the surviving spouse is under age 59½, are not subject to the 10% early withdrawal penalty tax. In these cases, the surviving spouse may want to take as a beneficiary under the Spousal Life Expectancy Rule until the spouse attains age 59½ and at that time implement the rollover. Another alternative is to split the account into two accounts. The surviving spouse could rollover one account and be assured of the longer stretch out as to that account. The other account could be maintained as the deceased spouse's account and paid out under the Spousal Life Expectancy Rule, without subjecting the pre-59½ distributions to the 10% early withdrawal penalty tax (and later rolled over when the surviving spouse attains 59½).

b. Rollover From Estate Approved

Even if the surviving spouse is not the named beneficiary a rollover may be possible. In PLR 200236052 (June 18, 2002), the Service allowed a surviving spouse to rollover a deceased owner's IRA where the spouse was the executrix and residuary beneficiary of the estate. The Service indicated that the new "proposed" regulations are not intended to allow a surviving spouse who is a residuary beneficiary of an estate, which estate is the beneficiary of the IRA, to elect to treat the IRA as the spouse's own account, but the regulations do not prohibit a rollover of the decedent's IRA into a new IRA in the spouse's own name.

Prior to the issuance of the final regulations, the Service had repeatedly allowed a surviving spouse to rollover an IRA of her deceased spouse where there was no IRA beneficiary named and when the spouse was sole beneficiary and executor of the estate. See PLR 8746055; PLR 9515041. Apparently the spouse must be in total control as the fiduciary.

> "Generally, if a decedent's IRA proceeds pass through a third party, e.g. an estate, and then are distributed to the decedent's surviving spouse, said spouse will be treated as acquiring them from the third party and not from the decedent. Thus, generally, said surviving spouse will not be eligible to rollover the IRA proceeds into her own IRA.
>
> However, if a decedent's estate is the beneficiary of a decedent's IRA proceeds, and the decedent's surviving spouse is the sole executrix of the estate and the sole beneficiary of the IRA proceeds that pass through the estate, then, for purposes of section 408(d)(3) of the Code, the Service has treated the surviving spouse as having acquired the IRA proceeds from the decedent and not from the estate." PLR 9515041.

In letter ruling 9524020, the participant designated his estate as beneficiary of his qualified plan benefits. His will provided that the residue of his estate would be divided between a marital trust and a second trust. His spouse was named as executor. The spouse exercised her state law elective share right to take one-third of the net estate, which included the right to specify which assets fund the elective share. The value of the qualified plan benefits exceeded her elective share. The spouse proposed to direct the transfer of part of the benefits to an IRA she would create. The IRS ruled the transfer eligible for the spousal rollover. In PLR 9445029, however, the Service refused to approve a spousal rollover when the surviving spouse received the IRA through the exercise of the corporate personal representative's discretion. Likewise in PLR 9303031, the Service refused to approve a spousal rollover because the spouse was not in total control as the trustee.

c. Rollover From Trust Approved

In PLR 200249008 (December 6, 2002), the Service allowed the post-death rollover by a surviving spouse of two 403(b) annuities payable to a revocable trust. According to the ruling, the annuities were payable at the time of the owner's death to a revocable trust in gross. The revocable trust divided into a marital trust and credit shelter trust. The surviving spouse had a power of withdrawal over the marital trust. The surviving spouse was the sole trustee following the settlor's death. The trustee had the ability to assign the annuities to the marital trust.

The plan presented to the government for approval was that the annuities would be paid to the trustee, the trustee would allocate the annuities to the marital trust, the spouse would demand payment of the annuities, and finally the spouse would then either rollover over the amounts in the annuities to new IRAs in the spouse's name or have the amounts paid directly to new IRAs in the spouse's name. The IRS recognized the normal rule that assets paid to a third party, such as an estate or trust, and then paid out to a surviving spouse are not subject to rollover treatment. Essentially, in this case, given the surviving spouse's control over the trust and the annuities, the IRS will ignore that the annuities were actually paid to a third party and assume for purposes of the rollover rules that the annuities were paid directly to the surviving spouse, thereby enabling the rollover treatment.

This is not to be confused with a surviving spouse's ability to elect to treat an account as his or her own account under IRC § 408. Reg. § 1.408-8, Q&A A-5(a) specifically indicates that the spousal election is not available through a trust, even a trust of which the spouse is the sole beneficiary. **This is why this new ruling is important to clarify that the rollover is still possible.**[4]

J. Multiple Beneficiary Rule

If a single IRA is paid to more than one individual beneficiary, the final regulations provide that the Designated Beneficiary, for purposes of applying the Life Expectancy Rule, is the oldest beneficiary of the group. Reg. § 1.401(a)(9)-5, A-7(a)(1). The exception to this rule is when separate accounts are established as discussed below.

K. Separate Accounts Rule

In cases involving multiple IRA beneficiaries, estate planners often recommend that the owner establish a separate IRA for as many beneficiaries as the owner will have, and name the individual beneficiaries as Designated Beneficiaries of "their" respective accounts. The owner will still be the owner of all the accounts, but the one account will

[4] Prior to the final regulations, similar rulings have approved IRA rollovers, when paid to a trust over which the spouse had total control. See PLR 8927042; PLR 9515042.

be replaced by two or more accounts, each with its own Designated Beneficiary. The final regulations define Separate Accounts as follows:

> "For purposes of section 401(a)(9), separate accounts in an employee's account are separate portions of an employee's benefit reflecting the separate interests of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts. However, once the separate accounts are actually established, the separate accounting can provide for separate investments for each separate account under which gains and losses from the investment of the account are only allocated to that account, or investment gain or losses can continue to be allocated among the separate accounts on a pro rata basis. A separate accounting must allocate any post-death distribution to the separate account of the beneficiary receiving that distribution." Treas. Reg. § 1.401(a)(9)-8, A-3.

1. Why separate accounts?

Treas. Reg. § 1.401(a)(9)-8, A-2(a)(2) provides that separate accounts do not need to be aggregated "for years subsequent to the calendar year containing the date on which the separate accounts were established." For example, separate accounts are used to avoid application of the multiple beneficiary rule, which states that individual IRAs with multiple beneficiaries (e.g., "in equal shares to my children") must make MRDs based upon the life expectancy of the oldest beneficiary. Thus, creating separate accounts allows for further stretching of distributions with respect to the younger beneficiaries. A separate account for the surviving spouse could be used so that the spouse is the sole Designated Beneficiary at the time of the Determination Date. This would allow the spouse to take advantage of (a) the special rules under the Spousal Life Expectancy Rule, and (b) Spousal Rollover.

2. Deadlines for Separate Accounts[5]

To establish separate accounts post-death, certain deadlines must be met to achieve the desired effect.

[5] *See* Choate, *Understanding the ^Final! Minimum Distribution Rules*, available at www.ataxplan.com.

3. Designated Beneficiary

For purposes of establishing who is the designated beneficiary, the separate accounts must be established by September 30 of the year after the year of the owner's death.

4. MRD Period

For purposes of determining the MRD distribution period, the separate accounts must be established by December 31st of the year following the year of the owner's death.

5. Allocation of Gains and Losses

For purposes of allocating investment gains and losses separately and all other purposes of determining MRDs, the separate accounts can be established at any time.

6. Other Separate Account Considerations

Note that to create separate accounts after death, the beneficiary designation must provide for definable shares (e.g., "to my three children in equal shares"). A beneficiary designation which provides "to my children" is probably not specific enough.

As quoted above from the final regulations, between the date of the owner's death and date of the creation of the separate accounts, gains and losses must be allocated pro rata to all the accounts and distributions must be charged to the account of the beneficiary who receives the distribution.

L. Reconstruct Inherited Accounts.

The final MRD regulations apply to "account balances and benefits held for the benefit of a beneficiary for calendar years beginning on or after January 1, 2003, even if the owner died prior to January 1, 2003." Thus, for IRA owners who died before January 1, 2003, "the designated beneficiary must be redetermined," and the "applicable distribution period . . . must be reconstructed" as if the final regulations apply, for purposes of determining MRDs for calendar years 2003 and on. See Appendix C for examples.

M. Account Titling Requirements

An IRA beneficiary must be able to identify the source of each IRA he holds. On the Form 5498, the IRA provider must state the name of the beneficiary and the prior owner: **"Brian Young as beneficiary of the Joan Smith IRA."** This is necessary because under various sections of the IRC the rules that apply in the case of an IRA held by a non spouse beneficiary are different from the rules that apply to the original IRA owner. For example, if the account owner had made nondeductible contributions to the

IRA, a Form 8606 would continue to be filed by the beneficiary showing the nontaxable amount of each distribution. IRS Pub. 590. Also, an IRA received by a non spouse beneficiary upon the death of a given IRA owner must be kept separate from any IRA established by the non spouse as an original owner, and also separate from any IRA received upon the death of any other original IRA owner. The beneficiary's taxpayer identification number is to be used in completing the Form 5498 reporting the portion of the IRA belonging to that beneficiary. Rev. Proc. 89-52.

N. Federal Income Tax Filing Requirements

In the year of the decedent's death, the IRA provider must submit a Form 5498 reporting the fair market value of the IRA with respect to the decedent (including any contributions in the year of death), as well as Form 5498 reporting the value of the IRA with respect to each beneficiary. In subsequent years, the IRA provider must only submit a Form 5498 for each beneficiary. Rev. Proc. 89-52.

O. Reporting Requirements for IRA Custodians and Trustees

Because the rules for determining the MRDs are (believe it or not!) substantially simplified, the IRS is now going to require the trustee or custodian to report certain information to help the Service track MRDs. The reporting requirements are the price to be paid for the simplification.

1. IRS Backs Off from Its Original Stance

Under the 2001 proposed regulations, in addition to the existing requirement to report account balances as of December 31st each year, trustees and custodians were required to report the appropriate MRD each year:

> The trustee of an IRA is required to report to the Internal Revenue Service and to the IRA owner the amount required to be distributed from the IRA for each calendar year at the time and in the manner prescribed in the instructions to the applicable Federal *tax* forms, as well as any additional information as required by such forms or such instructions.[6]

Many custodians, trustees, and qualified plan administrators objected to the requirement that the MRD be calculated, on the basis that they would not always know all of the facts, and therefore may not always advise owners and beneficiaries properly with respect to the MRD.

[6] 2001 Prop. Reg. § 1.408-8, A-10.

The Service, in the final regulations, removed the specific regulatory requirement to report the account balances and MRDs, instead granting itself authority to issue further guidance and requirements:

> [T]he trustee, custodian, or issuer of an IRA is *required to report information with respect to the minimum amount required to be distributed* from the IRA for each calendar year to individuals or entities, at the time, and in the manner, prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(b) of this chapter) as well as the applicable Federal tax forms and accompanying instructions. *Treas. Reg. § 1.408-8, A-10 (emphasis added).*

On April 16, 2002, the Service issued Notice 2002-27 in conjunction with the final regulations, which provides the reporting requirements for IRAs and qualified plans under the final regulations. Beginning January, 2003, if an IRA owner is alive on January 1st, the trustee or custodian must, by January 31st, report to the IRA owner information under one of the following two alternatives:

Alternative One: Report the MRD to the owner, assuming the ULT applies (i.e., assuming the owner does not have a more-than-10-years-younger spouse), and assuming no amounts received into the account after December 31st are required to be back-allocated to the account for the calendar year for which the MRD is being reported.

Alternative Two: Provide a statement to the IRA owner that informs the owner that an MRD is required for the calendar year and the date by which such amount must be distributed; and include an offer to furnish the owner, upon request, with a calculation of the amount of the MRD with respect to the IRA for that calendar year. If the IRA owner requests such a calculation, the IRA custodian must calculate the MRD for the owner and report that amount to the owner.

Under either alternative, the statement must also inform the owner that the custodian will be reporting to the IRS, beginning with MRDs for calendar year 2004, the fact that the owner is required to receive an MRD for the calendar year.

If the surviving spouse of a deceased owner elects to roll the IRA over, the custodian will provide either of the above statement alternatives to the spouse. Furthermore, "[i]f the spouse is the sole beneficiary of an IRA of a deceased owner but has not affirmatively redesignated the IRA as the spouse's own IRA, the [custodian] is permitted to assume that the surviving spouse of the deceased IRA owner has not elected to treat the IRA as the spouse's own IRA and continues to be treated as a beneficiary for purposes of § 401(a)(9)." This assumption will be important to custodians, as they are only required to report to *owners*, and not to *beneficiaries* (see below).

2. Reporting to the IRS

Beginning with MRDs for calendar year 2004, if an MRD is required with respect to an IRA for a calendar year, the custodian of the IRA must inform the IRS of that fact (but need not indicate the amount) on Form 5498, IRA Contribution Information, for the immediately preceding year (i.e., on a 2003 Form 5498 for a 2004 MRD).

3. No Reporting for Section 403(b) Contracts

Section 1.403(b)-3 provides that a section 403(b) contract is treated as an individual retirement plan for purposes of satisfying the MRD rules. Consequently, the delegation of authority to require reporting for IRAs also applies to section 403(b) contracts. However, no reporting is required at this time with respect to MRDs from section 403(b) contracts.[7]

4. No Reporting for IRAs of Deceased Owners

Importantly, reporting is also not required at this time with respect to IRAs of deceased owners. Perhaps the Service was sympathetic towards custodians who were worried about trying to determine which of the four post-death payout rules applies.

Despite the limited reporting requirements in Notice 2002-27, the Service noted in the "Explanation of Provisions" section of the Preamble to the final regulations that "the Treasury and the IRS continue to have concerns about the overall level of compliance in this area and intend to monitor the effect of the new reporting regime on compliance to determine whether it would be appropriate to modify the regime in the future."

P. Taking Distributions from Multiple IRAs

The owner of multiple IRAs has to determine the MRDs for each account separately, but can take the aggregate MRD from any one or more of the IRAs. Reg. § 1.408-8, Q&A A-9. Likewise, the owner of multiple 403(b) annuities may aggregate the accounts for distribution purposes in the same manner as IRAs. Reg. § 1.403(b)-3, Q&A A-4.

Inherited IRAs may not be aggregated with an individual's IRAs held as an owner (i.e., contributory or rollover IRAs). However, an individual with more that one inherited account from the same decedent may aggregate the accounts for distribution purposes.

Traditional IRAs, 403(b) annuities or Roth IRAs may not be mixed for purposes of these rules. For example, if the owner has one IRA and one 403(b) annuity, the

[7] See also Notice 2003-2, 2003-2 I.R.B. 257 (December 20, 2002) (regarding the reporting requirements for variable annuity payments).

distribution for each account must be computed separately and taken separately. These rules do not apply to qualified plans.

Q. Beneficiary Can Name Beneficiaries

The beneficiary of an IRA who is receiving distributions from an inherited account can name his or her own beneficiaries in the event the beneficiary fails to survive the distribution of the account.

R. Beneficiary Can Move the IRA to New Custodian or Trustee

After the owner's death, the beneficiary may move the IRA from one custodian or trustee to another. This is accomplished by a direct transfer of the funds (i.e., a trustee to trustee transfer). The new account must be set up and maintained in the name of the deceased owner for the benefit of the beneficiary. *See* PLR 200228025 (cites Rev. Rul. 78-406 as authority for allowing a trustee to trustee transfer *by a bank trustee* after the owner's death); PLR 200221048 (cites Rev. Rul. 78-406 as authority for allowing a trustee to trustee transfer *by a beneficiary* after the owner's death); PLR 200204048 (beneficiary initiated trustee to trustee transfers approved as authorized by Rev. Rul. 78-406). PLR 200228023 illustrates what not to do. In this ruling, the son of the deceased owner received a distribution and then tried to roll it over into two new IRAs in the decedent's name for the benefit of the son. This was a taxable distribution, ruled the Service, not protected by Rev. Rul. 78-406, which only applies to direct trustee to trustee transfers.

S. 691(c) Deduction for Estate Tax Attributable to Income in Respect of a Decedent

Where estate taxes are imposed on the value of the retirement account, an income tax deduction is allowed for the estate tax **attributable** to the retirement account (i.e., the item of income in respect of a decedent ("IRD")). IRC § 691(c). This deduction has the effect of reducing the effective rate of the income tax on the distribution of the retirement account following the account owner's death – to mitigate the effect of double taxation. It is important to note that the 691(c) deduction is an itemized deduction taken on the income tax return of the recipient of the income. The 691(c) deduction is not subject to the 2% floor on itemized deductions, but is subject to the 3% haircut, which could cause some diminution in the value of the deduction.

1. Calculation of the § 691(c) Deduction

Essentially, the deduction equals the increase in estate tax payable, if any, when the value of the IRA is included in the gross estate for estate tax purposes. First, the estate tax is determined without including the value of the IRA in the gross estate. Second, the

estate tax is redetermined, this time including the net value of the IRA in the gross estate. The increase in the estate tax, if any, is the amount of the deduction. IRC § 691(c)(2).

2. Effect of State Death Taxes

In 2004 (and earlier years), any state death taxes paid will not increase the § 691(c) deduction, since the deduction is only for the Federal estate taxes attributable to the retirement account. This creates an advantage to distributing the IRA prior to the owner's death (i.e., accelerating the payment of the income taxes). This strategy removes the income taxes paid from the owner's estate, effectively making both federal and state income taxes deductible for estate tax purposes. On the other hand, if the IRA beneficiary could (and would) defer the distribution of the account for a long period of time or would be taxed in a lower income tax bracket, the acceleration strategy may not be worthwhile.

The EGTRRA changes to the Federal estate tax have created some twists and turns in determining whether the acceleration strategy will be beneficial. The state death credit is reduced by 75% for 2004, and some states like Florida will limit its state estate tax to the amount of the allowable credit, other states such as Maryland, Virginia, and the District of Columbia have "decoupled" for state death tax purposes and will impose the full state estate tax (as determined under the schedule in IRC § 2011(b)) without regard to the limitation on the allowable credit. In 2005, the state death tax credit is replaced with a deduction for state estate taxes. At that time, some states like Florida will not impose any state estate tax, whereas the "decoupled" states will continue to impose a state estate tax.[8] The examples below illustrate the divergent results that may be achieved depending on these factors.

a. 2004 Twists

Assume Dad is age 74 in 2004. Dad is not expected to survive the calendar year. Dad has a $1 million IRA and non-IRA assets of $4 million. Son, the sole beneficiary of Dad's estate and IRA, has assured you that within the year following Dad's death, the entire IRA will be distributed --- accelerating all of the income.

If Dad liquidates the IRA during his lifetime, the funds used to pay the income taxes are removed from his gross estate. If Dad dies owning the IRA, estate taxes are paid on the funds that eventually will be used by Son to pay the income taxes on the retirement account. Son, however, is entitled to an income tax deduction under § 691(c) for the estate taxes attributable to the IRA. Even though the § 691(c) deduction is

[8] The amount of state estate tax imposed in the "decoupled" states varies and the method by which it is computed may vary. For purposes of this outline, it is assumed that the state estate tax is determined solely by reference to the schedule in IRC § 2011(b).

designed to mitigate the illustrated duplicative taxation, it will not produce a wash. This is because the § 691(c) deduction is calculated without regard to the state death tax credit.

691(c) Deduction Example	Deferral Model in Florida	Acceleration Model in Florida	Deferral Model in "Decoupled" State	Acceleration Model in "Decoupled" State
Estate Taxes				
Balance of IRA at death	1,000,000	-	1,000,000	-
Amount of NonIRA assets at death (including net value of liquidated IRA assets in 2004 @40% income tax)	4,000,000	4,600,000	4,000,000	4,600,000
Total gross estate	5,000,000	4,600,000	5,000,000	4,600,000
Less estate tax (state & federal)	(1,665,000)	(1,473,000)	(1,958,700)	(1,733,100)
Income Taxes on IRA after Death				
IRA subject to income tax after death	1,000,000	-	1,000,000	-
Less 691(c) deduction	(452,200)	-	(452,200)	-
Tax base	547,800	-	547,800	-
Less 40% income tax on IRA after death	(219,120)	-	(219,120)	-
Total to Family after Estate and Income Taxes				
Total gross estate	5,000,000	4,600,000	5,000,000	4,600,000
Less estate tax	(1,665,000)	(1,473,000)	(1,958,700)	(1,733,100)
Less 40% income tax on IRA after death	(219,120)	-	(219,120)	-
Total to family after estate and income taxes	3,115,880	**3,127,000**	2,822,180	**2,866,900**
Savings from Acceleration		11,120		44,720

b. 2005 Turns

For years prior to 2005, state death taxes are accounted for on the estate tax return as a credit against the Federal estate tax. Beginning in 2005, state death taxes paid will become a deduction, like the marital or charitable deduction, from the gross estate before the Federal estate tax is determined. This begs the question for purposes of determining the § 691(c) deduction, in 2005 and beyond, would the deduction for state death taxes be considered in determining the Federal estate tax? If so, here is what would occur continuing from the example used above, except that death occurs in 2005.

691(c) Deduction Example	***Deferral Model in Florida***	***Acceleration Model in Florida***	***Deferral Model in "Decoupled" State***	***Acceleration Model in "Decoupled" State***
Estate Taxes				
Balance of IRA at death	1,000,000	-	1,000,000	-
Amount of NonIRA assets at death (including net value of liquidated IRA assets in 2004 @35% income tax)	4,000,000	4,650,000	4,000,000	4,650,000
Total gross estate	5,000,000	4,650,000	5,000,000	4,650,000
Less estate tax (state & federal)	(1,635,000)	(1,470,500)	(1,842,548)	(1,657,272)
Income Taxes on IRA after Death				
IRA subject to income tax after death	1,000,000	-	1,000,000	-
Less 691(c) deduction	(470,000)	-	(417,736)	-
Tax base	530,000	-	582,264	-
Less 35% income tax on IRA after death	(185,500)	-	(203,792)	-
Total to Family after Estate and Income Taxes				
Total gross estate	5,000,000	4,650,000	5,000,000	4,650,000
Less estate tax	(1,635,000)	(1,470,500)	(1,842,548)	(1,657,272)
Less 35% income tax on IRA after death	(185,500)	-	(203,792)	-
Total to family after estate and income taxes	3,179,500	3,179,500	2,953,660	**2,992,728**
Savings from Acceleration		-		39,068

Beginning in 2005, in states such as Florida that will not impose any state estate tax, there will be no advantage to the acceleration strategy as a result of the method by which the § 691(c) deduction is computed. It will produce a wash. This is logical since § 691(c) is designed to provide a deduction against income for the Federal estate tax

attributable to the retirement account. If there is no state estate tax to create disparity, such as would be the case in Florida, the result should be a wash.

In states that have "decoupled" and that will impose a state estate tax, and assuming that such tax is deductible in the process of computing the Federal estate tax with and without the IRA account to determine the § 691(c) deduction, there will remain an advantage for the acceleration strategy.

3. Recovery of Deduction

There are no rules describing how to recover the 691(c) deduction when the IRA is being distributed in installment distributions. The prevailing opinion appears to be that the amount of the 691(c) deduction that may be used with respect to each annual distribution is determined by multiplying the annual retirement account distribution by the ratio of the amount of the total 691(c) deduction over the total value of the retirement account included in the estate for estate tax purposes. This continues until the entire deduction is consumed.

The deduction is shared pro rata among the beneficiaries of the IRA (or items of IRD). This allocation method may create inequality when some of the IRA qualifies for the marital deduction and some does not.

T. The 50% Excise Tax

An excise tax is imposed for failing to make a required distribution. The tax is 50% of the amount of any MRD to the extent the required distribution amount is not actually made. The IRS has the power to waive the imposition of the excise tax if the distribution shortfall was due to reasonable error and reasonable steps are being taken to remedy the shortfall.[9] For more detail on this see the attached outline by John T. Bannen, entitled "Practical Advice for Common Problems: Planning for Pre and Post-Mortem Distributions from IRAs and Qualified Plans," p. E-25 (ACTEC Annual Meeting, San Antonio, March 13, 2004)(hereinafter the "Bannen Outline").

U. Rollover Outstanding at Death.

A decedent's estate was allowed to rollover a distribution received by the decedent within 60 days of death. *Gunther v U.S.*, 573 F. Supp 126, 83-1 USTC 9252 (W.D. Mich. 1982). *See also* LTR 8351119 (Surviving spouse/executor permitted to establish an IRA in the decedent's name and make a rollover contribution of the decedent's distributive share from his qualified plan following his death but before 60 day rollover period expired.).

[9] Treas. Reg. § 54.4974-2, Q&A 8(a).

The 60-day rollover rule of § 408(d)(3) applies from date of receipt and has been strictly construed, although the Tax Court was sympathetic and allowed a late rollover when the account was not timely set up due to clerical error. *Wood v. Commr.* 93 T.C. 114 (1989). If a rollover is not timely it will be treated as an excess contribution subject to a 6% penalty, in addition to the distribution being taxable income in the year of the receipt. *Michel v. Commr.* 58 T.C.M. 1019 (memo. 1989-670).

As a part of the Unemployment Compensation Act of 1992 certain rules regarding rollovers of qualified plan benefits to an IRA were changed. These changes took effect on January 1, 1993. Under these new rules, a distribution from a qualified plan that is intended to be rolled over to an IRA must be transferred directly to the trustee or custodian of the qualified IRA. The employee/participant must effect an election to have this occur. If the distribution is paid directly to the participant, the trustee of the qualified plan must withhold 20% of the distribution and remit it to the IRS. The participant still has 60 days to rollover the distribution, but only has 80% of the funds to rollover and failing to rollover the remaining 20% would subject that amount to income taxation. IRC § 3405(c)(1) and (2).

IV. ESTATE PLANNING OPTIONS

Who should be the beneficiary of the retirement account? What are the income tax implications? What are the estate tax implications?

A. Beneficiary Choices

1. Spouse

If the IRA owner is married, your planning should heavily weigh toward making the spouse the outright beneficiary of the IRA, where doing so would not otherwise conflict with the owner's intent. A spouse is a favored beneficiary under the minimum distribution rules and is given special options to maximum the income tax deferral of the retirement account. The surviving spouse may the roll the benefits over to the spouse's own IRA (or elect to treat the IRA as the spouse's own IRA). As such, a surviving spouse may defer all distributions until the spouse's RBD, start over using the ULT, and name new beneficiaries (i.e., the children) to receive distributions after the spouse's death based on their life expectancies.

A spouse could also postpone distributions to December 31 of the calendar year in which the owner would have reached age 70½. This may have advantages to avoiding the 10% early withdrawal penalty tax, which does not apply to distributions to a "beneficiary" (Sec. III.I.7.a.)

If a U.S. citizen spouse is the outright beneficiary, the IRA should qualify for the marital deduction in the participant's estate if the spouse can choose the form of benefit,

including a lump sum distribution, and accelerate payment of the account balance at any time.[10]

Another reason for naming the spouse as the beneficiary is to avoid the complexities of with naming a marital trust or credit shelter trust as an IRA beneficiary.

Naming the spouse as the beneficiary is simple and fairly certain to achieve a favorable result.

2. Children or Other Individuals

If the children (or other individuals) are named as the outright beneficiaries of the retirement account, each child's share of the account can be paid out over his or her life expectancy. Distributions would be taxed at the child's individual income tax rates, which would likely be lower than the trust rates. Some states law provide that the child's account share is protected from his or her creditors. Similar to naming the spouse as the outright beneficiary, naming the children as the outright beneficiaries is simple and likely to achieve a favorable result.

Naming a trust for each child has some advantages, however, as compared to naming the child as the outright beneficiary. For example, naming a trust for a child avoids the need for the child to designated a successor beneficiary under the retirement account agreement, potentially avoids estate tax on the child's share of the account that remains undistributed at the child's death, provides creditor protection with spendthrift provisions, prevents the child from having full control over his or her share of the account, allows the owner to determine the persons in charge of the management and investment of the account assets, and allows the owner to control the disposition of the child's share of the account to younger generation beneficiaries upon the child's death. On the other hand, there are some disadvantages to using trusts as beneficiaries of retirement plan assets, as described below.

3. Non-Individuals

A person who is not an individual, such as the owner's estate or a charity, may not be a designated beneficiary and provide related life expectancy. Naming a trust as beneficiary that qualifies for "look through" treatment, as described below, will provide a designated beneficiary.

Note that the existence of the nonindividual beneficiary will cause the owner to be treated as having no designated beneficiary, even if one or more of the beneficiaries named are individuals. This rule may not apply, however, if the individual beneficiary is the beneficiary of a separate share of the owner's account.

[10] Treas. Reg. § 20.2056(b)-5(f)(6).

4. Trusts

Perhaps one of the most complicated aspects of estate planning for retirement accounts it having an account paid to a trust, while achieving the maximum payout period and accompanying income tax deferral. Structuring a trust as a retirement account beneficiary requires consideration of numerous issues, including, to name just a few, loss of the spousal rollover, dealing with the "look through" rules and conduit trust approach, the separate share rules, state law and governing instrument principal and income allocation rules, trust accounting rules, and trust income tax rates, which in 2004 reaches the top 35% tax bracket after only $9,550 of income, versus individual income tax rates. Practically speaking, there are many opportunities for the account owner, beneficiaries, and the practitioner to achieve less than the optimum result.

a. Trust Shadow Rules

Perhaps the most disappointing aspect of the final regulations is that the IRS remains troubled by the concept of having an IRA paid to a trust. For years now, a set of "Shadow Rules" have existed for IRAs paid to a trust. These are the rules that senior IRS personnel have discussed at ABA and ALI-ABA seminars and which have been repeated and written about by noted authorities. The Shadow Rules were not part of the old rules, were not covered in any public guidance issued by the Service, were not part of the new proposed regulations, and are not part of the new final regulations (except to the extent the "Conduit Trust" approach is clarified as discussed below). The Shadow Rules involve the interpretation of the "contingent beneficiary rule" and the rule that all trust beneficiaries must be "identifiable." For example, one of the Shadow Rules is that any person within the class of possible appointees under a special power of appointment must be considered a trust beneficiary for purposes of determining the oldest trust beneficiary. Therefore, according to this Shadow Rule, if it is possible for a trust beneficiary to appoint to a charity or creditor, then the trust cannot provide a Designated Beneficiary.

b. Look Through Trusts

As discussed above, only an individual can qualify for the Life Expectancy Rule. However, a trust that meets certain specifications can use the oldest trust beneficiary as the Designated Beneficiary for purposes of qualifying for the Life Expectancy Rule. Essentially, in such a qualifying trust, you "look through" the trust to see the individual beneficiaries and use the life expectancy of the oldest trust beneficiary to determine the MRDs.

(1) Requirements for Look Through Treatment

To be a "look through" trust, the trust (i) must be valid under state law (or would be but for the fact there is no corpus), (ii) must be irrevocable (or will, by its terms, become irrevocable upon the death of the owner), and (iii) the beneficiaries of the trust

must be identifiable from the trust instrument (discussed below). Reg. § 1.401(a)(9)-4, Q&A A-5(b). There is also a requirement that certain documentation be provided to the plan administrator or IRA provider (discussed below).

(2) Identifiable Beneficiaries and Contingent Beneficiaries

This is the most controversial part of the "look through" trust rules. For this purpose, trust beneficiaries are those "who are beneficiaries with respect to the trust's interest in the employee's benefit". Reg. § 1.401(a)(9)-4, Q&A 5. This means that all of the beneficiaries of a trust, even remote remainder beneficiaries, must be considered. This is because of a separate rule that provides that a contingent beneficiary is considered to be a beneficiary for purposes of determining the beneficiary having the shortest life expectancy and whether or not there is a Designated Beneficiary. Reg. § 1.401(a)(9)-5, Q&A 7(b).

For example, in PLR 200228025 (April 18, 2002), the IRS determined that the "look through" rules applied with respect to a trust for two minor grandchildren, but the older contingent beneficiary's life expectancy must be used to determine payout period. The trust provided that the trustee had discretion to make distributions for the grandchildren's support, health, and maintenance until they reached age 30, at which time each grandchild could withdraw his share. Older contingent beneficiaries were named in the event the grandchildren died prior to age 30. This unfavorable ruling is further indication that straying from the strict confines of the so called "conduit trust" approach, discussed below, may be hazardous. *Cf.* PLR 199903050 (surviving spouse's right of withdrawal over a trust – self-help conduit – allowed remainder beneficiaries to be disregarded).

(3) "Look Through" Trusts Provided Designated Beneficiary

In PLRs 200235038 through - 200235041 (June 4, 2002), the Service approved application of the "look through" rules under the final regulations. The decedent's IRA was payable to a revocable trust that became irrevocable upon the decedent's death. The trust divided into four (4) shares, 25% payable outright to one beneficiary, and the balance divided into equal shares for the decedent's three children, whose shares were continued in trust. Each child's trust provided (i) all income would be distributed, (ii) discretionary principal could be distributed for the child's health, education, maintenance and support, and (iii) a special testamentary power of appointment, which excluded any beneficiary older than the oldest child, non individuals and the child's estate or creditors. The trust also prohibited any administration expenses, debts or taxes to be charged to the IRA. The rulings held that the children qualify as designated beneficiaries. Because the separate accounts were created at the trust level (and not at the account level or

beneficiary designation level), the oldest child's life expectancy is used to determine MRDs for all separate shares.

(4) Trust Level Separate Accounts Fail to Provide Desired Designated Beneficiary

In PLRs 200317041, 200317043 and 200317044, the decedent's beneficiary designation named his revocable trust as beneficiary of his IRA and directed the trustee to create three separate trusts to which the IRA was distributed. The Service concluded that, under the final regulations, the separate trust shares would not receive separate share treatment. The Service cited an additional sentence in the final regulations, which was not part of the proposed regulations, which states: "[T]he separate account rules under [these regulations] are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit." While the rationale in the 2003 rulings is suspect, and commentators have been critical, the result can be avoided by careful attention to detail.

The division into separate accounts must occur at the account level and not at the trust level. It is not enough for the trust to require the trustee to divide the trust into, say, two separate trusts for the grantor's two children. The beneficiary designation must divide the account into separate accounts, and then make those separate accounts payable to separate trusts. The beneficiary designation might say something along the lines of:

> The custodian shall divide the account into as many separate equal accounts as necessary to name one such account for each then-living child of mine, and allocate one such account for each pre-deceased child of mine leaving descendants then living. Each separate account named for a child of mine shall be paid to the separate trust named for such child under the XYZ Trust. Each account allocated to a pre-deceased child shall be divided into further separate accounts named for such pre-deceased child's descendants *per stirpes*. Each account so named for a descendant of a pre-deceased child shall be paid to the separate trust named for such descendant under the XYZ Trust.

Some have suggested that the most prudent approach with respect to trying to ensure separate account treatment is to create separate trusts for the children during the grantor's lifetime, and designate each in separate shares on the beneficiary designation. Obviously, this will increase the complexity and cost of the estate plan.

It bears emphasizing at this point that separate account treatment with respect to trusts only becomes critical where there is a significant disparity in ages between trust beneficiaries. The default rule is that the account will be required to pay MRDs to the trust at a rate based on the oldest beneficiary's life expectancy. This result may be quite

acceptable if the beneficiaries are children who are only a few years apart, especially when the elimination of separate share complexity is considered.

(5) Documentation Requirement

Generally, a copy of the trust or a list of beneficiaries, including contingent and remainderman beneficiaries, with a description of the conditions of their entitlement. This information is provided by the trustee and must be certified to the best of the trustee's knowledge. The owner supplies the documentation, however, if the owner desires to use the joint life expectancy for the owner and the owner's spouse, because the spouse is more that 10 years younger than the owner,. Reg. § 1.401(a)(9)-4, Q&A A-6. The required documentation need not be provided to the IRA trustee or custodian until October 31st of the year following the year of the owner's death. The one exception here is when the owner desires to use the joint life expectancy for the owner and the owner's spouse, because the spouse is more that 10 years younger than the owner. In such a case, the documentation should be provided by the time of the RBD (or at such later time the trust is named beneficiary) if the spouse is to be treated as the Designated Beneficiary through a trust. Reg. § 1.401(a)(9)-4, Q&A A-6(a).

For practical purposes, IRA custodians are reluctant to accept such documentation, whenever provided, due in part to the additional document handling requirements imposed upon them. In addition, account custodians have openly expressed concern that accepting these documents may somehow impose a duty on them to be familiar with the contents and to continually monitor the accounts to ensure the most recent trust document or beneficiary list is on file.

c. Conduit Trusts

(1) Approved by Final Regulations

The final regulations confirm the so called "conduit trust" approach, where an IRA is payable to a trust that requires all distributions from the IRA to be distributed to the trust beneficiary. Assuming the trust beneficiary lives to life expectancy, the beneficiary will have received all the MRDs, as well as any distributions in excess of the MRDs. Hence, the trust is simply acting as a conduit to pass the distribution to the beneficiary. In Example 2 of Reg. § 1.401(a)(9)-5, A-7(c)(3), the owner of qualified plan account, A, names a testamentary trust as the beneficiary. The example assumes the trust documentation requirements are satisfied. The testamentary trust provides that all income is payable annually to A's spouse, B. A's children, who are all younger than B, are the only remainder beneficiaries of the trust. The testamentary trust provides that all amounts distributed from A's account to the trustee while B is alive will be paid directly to B upon receipt by the trustee. Based on these facts, the example finds that B is the **sole** beneficiary in A's account for purposes of determining the Designated Beneficiary under section 401(a)(9)(B)(iii) and (iv). No amounts in the plan could be accumulated in the

trust for any other beneficiary during B's lifetime. Because B is the **sole** beneficiary of A's plan assets, MRDs to the trust may begin at the time required under the Spousal Life Expectancy Rule, which requires distributions to begin at the latter of (i) December 31st of the year following the calendar year of the owner's death, or (ii) December 31st of the calendar year in which the owner would have reached age 70½. Although not specifically stated, under the logic of Example 3, the spouse should also be considered the **sole** beneficiary of an account for purposes of the exception to determining MRDs while the owner is alive under the ULT for spouse beneficiaries who are more than ten years younger. Reg. § 1.401(a)(9)-5, Q&A A-4(b).

5. Charity

Since a charity is not an individual, a charity may not be a Designated Beneficiary or provide related life expectancy. However, giving the retirement account to charity at death may still be good planning as doing so avoids income and estate tax consequences. See below at IV.C.9.

6. Estate

Since an estate is not an individual, an estate may not be a Designated Beneficiary or provide related life expectancy. Except in the most unusual circumstances, an estate is the worst choice as the retirement account beneficiary. In addition to the loss of income tax deferral, paying the account to the estate may expose the account to debts and estate administration expenses, as well as the claims of other creditors.

7. Default Beneficiary

Retirement account owners frequently die without having designated a beneficiary. In these cases it is important to review the IRA Agreement or plan documentation to determine the default beneficiaries. Most often the default beneficiary will be the owner's estate, which is usually the worst choice for distribution planning. With lesser frequency, the default beneficiary may be the owner's spouse, otherwise the owner's children or descendants, *per stirpes*.

B. Income Tax Implications.

The taxable amount of distributions received by an estate or beneficiary of a deceased account owner from qualified retirement plans and IRAs is taxed as IRD. There is no step-up in basis under IRC § 1014 for such amounts. The beneficiary would report the taxable amount received as ordinary income in the year received. The goal therefore is to plan the distribution of the account in such a manner that enables the deferral of distributions as long as possible. The substantial value of tax deferred growth inside the retirement account should be protected.

C. Estate Tax Implications

1. IRA May Not Be Discounted for Estate Tax Purposes

In TAM 200247001, the National Office of the IRS is asked whether an IRA can be discounted for estate tax purposes as a result of the inherent income tax liability. They answered No! Citing *Est. of Robinson*, 69 T.C. 222 (1977), the ruling found: "As was the case in *Estate of Robinson*, the adverse impact of the potential income tax inherent in the IRAs is alleviated by the section 691(c) deduction. Thus, this income tax benefit functions as a statutory substitute for the valuation discount. Under these circumstances, any additional reduction in estate tax for the potential income tax would be unwarranted."

2. Life Insurance/Qualified Plan Bailout.

On February 13, 2004, the IRS issued guidance to shut down "abusive transactions involving specially designed life insurance policies in retirement plans…" IRB 2004-21 (2/13/04). The idea of these plans involved the transfer of an IRA to a qualified plan that could purchase insurance on the life of the account owner (IRA's cannot do that). The policy would be designed to have surrender charges and perhaps other features to depress its value in the early years, during which time the policy would be sold to the account owner's irrevocable insurance trust. This had the effect of discounting the value of the retirement assets subject to estate taxes. Shortly after the policy was transferred to the insurance trust it would magically balloon back up in value. The sales proceeds received by the qualified plan account could be rolled back out to a new IRA.

3. QTIP/Family Trust. See the Bannen Outline

4. The Case of the Jumbo IRA and Creative Credit Shelter Trust Funding

Frequently, we see married couples when one spouse has a large retirement account and the remaining assets are enough to fund just one spouse's credit shelter trust. Perhaps the family home comprises most of the wealth outside of the retirement account.

Example 1

Asset Description	Husband	Wife	Joint	Total
Family Home	-	-	1,500,000	1,500,000
IRA	1,500,000	-		1,500,000
Total	1,500,000	-	1,500,000	3,000,000

In the example, if the husband dies first we would like to have the IRA pass to the wife, planning to take advantage of the spousal rollover, and use the family home to fund

the husband's credit shelter trust. The problem is that family home is the only asset available to fund the wife's credit shelter trust if she is the first to die.[11] One partial solution in the above example is for the spouses to own the family home as equal tenants in common. One-half of the home's value, however, would not be sufficient to fund each spouse's credit shelter trust. This problem is exacerbated with the scheduled increases to the estate tax exemption equivalent amount under EGTRRA.

PLR 200403094 provides a roadmap for handing this situation.[12] In this ruling, the husband establishes a revocable trust that provides for a typical sort of credit shelter trust and marital gift outright if his wife survives him. If his wife predeceases him, however, the trust provides the wife with a general power of appointment over his trust equal to the amount needed to fully fund the wife's credit shelter trust. The plan is that if the wife predeceased the husband, the wife would exercise the general power over the husband's trust and that property would pass through her estate to a credit shelter trust, in which the husband would be the beneficiary. The IRS ruled that (i) the exercise of the power by the wife would be a completed gift from the husband to the wife qualifying for the gift tax marital deduction, (ii) the wife would be treated as the owner of the property she appoints (and thus the husband would not be treated as making a gift to the remainder beneficiaries of the credit shelter trust created under the wife's will), and (iii) the husband would not have a 2036 retained interest in the credit shelter trust created under the wife's will.

5. Annual Exclusion Gifts.

Should the IRA owner make annual exclusion gifts, even if the IRA owner would have to accelerate distributions from the account and trigger income to make the gifts?

6. Generation-Skipping Transfer Tax Planning.

Some advisors suggest giving the IRA account to grandchildren, since they are younger and can get the most stretch out on the distribution. Is this a good idea?

7. Life Insurance.

Some advisors suggest accelerating distributions for the purpose of acquiring life insurance on the life of the IRA owner (and perhaps spouse), usually through an irrevocable trust excluded from the IRA owner's estate, as a means of reducing overall income and estate taxes. Is this a good idea?

---

[11] *See generally*, Cason, *IRS Ruling Approves "Poorer Spouse Funding Technique,"* EST. PLAN., May, 2004, at 234; Cason, *Maximizing Funding of Credit Shelter Trust with Non-IRA Assets*, EST. PLAN., June, 2002, at 282.

[12] *See also* PLRs 200311020; 200101021.

8. Investment Orientation.

Should the client invest more of his IRA account in bonds and fixed income investments as compared to the individually owned portfolio?

9. Charitable Planning

a. Gifts During Lifetime Trigger Income Tax

It is generally not advisable to take withdrawals from retirement accounts for purposes of making charitable contributions. The withdrawal will be fully includible in income, and the corresponding charitable deduction will generally be insufficient keep the additional income from increasing the tax payable. This is due to a variety of factors, including the AGI percentage limitations on charitable gifts, the 3% haricut, the possibility of moving into a higher marginal rate bracket, AMT, etc. In addition, withdrawal prior to age 59½ can result in an extra 10% penalty. Over the past two years, varying versions of legislation which would exclude from income amounts paid to charities from retirement accounts have been considered by both houses of Congress without result. Most versions of the legislation limit the exclusion to taxpayers over a stated, "retirement-associated" age (e.g., 67 or 70).

b. Distributions at Death

Many advisors suggest giving the retirement account to charity at death to avoid the income and estate tax consequences.

If the owner is inclined toward charitable giving, IRAs are good assets to pass upon death. A charity as a beneficiary of an IRA would not be taxable upon receipt of distributions for income tax purposes and the retirement account passing at the death of the owner would be fully deductible for estate tax purposes. Because IRAs constitute items of IRD, it will actually cost the family less to devise the IRAs to charity than a devise of non-IRD assets.

Example: What are the costs to the family of a charitable devise of $1,000,000? This example compares in each case what would have passed to the children had the charitable devise not been made:

	Devise from a Will or Revocable Trust	IRA/IRD
Devise	$1,000,000	$1,000,000
Estate Tax @ 48%	-480,000	-480,000
Income Tax @ 28%	0	-280,000
Balance to Children	$450,000	$271,800

Generally speaking, however, IRAs should not be used to fund pecuniary charitable bequests, as this may result in IRD being accelerated and taxed to the decedent's estate. *See* §691(a)(2); Treas. Reg. 1.1014-4(a)(3).

c. Named as the beneficiary directly.

Naming the charity as the account beneficiary directly on the account beneficiary designation form is the preferred approach, especially for clients who desire to benefit charitable and non-charitable beneficiaries. Separating out the retirement assets for charitable beneficiaries will avoid muddying the "designated beneficiary" waters and guard against income tax acceleration in the estate. If the account owner does not wish the entire account to pass to charity, the beneficiary designation form should simply divide the account into shares, and direct the custodian as to the distribution of the shares.

If the owner wants to delay choosing the particular charity, or have another person make that choice after his or her death, the owner could name a donor advised fund. The donor advised fund should be created prior to the owner's death and indicate who is to choose the charity.

d. Private Foundation.

Similar to naming a public charity as the IRA beneficiary, naming a private foundation results in zero income or estate tax on the IRA assets. Unlike a public charity, however, a private foundation enables the assets to be managed by family members and used for family philanthropic efforts for many years. Thus, the IRA payable to a private foundation could be a source of intangible benefit to successive generations. The foundation could also pay reasonable management fees to family members for maintaining its operations. For an analysis of the private foundation option, with an example demonstrating the not insignificant benefits derived from management fees, see Babitz, Fogg, Pappaterra, and Bickel, *The IRA Double-Tax Trap: The Private Foundation Solution*, EST. PLAN., August, 2002, at 411.

e. Named under Will/Revocable Trust and retirement assets allocated to devise.

Often, however, the IRA beneficiary designation makes the entire account payable to the estate or "my revocable trust." If a charity is named as a beneficiary in the will or revocable trust, can the IRA be used to fund the bequest?

As an initial consideration, the problems associated with attaining "designated beneficiary" status for trusts have been discussed above, and a charity as a beneficiary of a trust will generally result in "no designated beneficiary" status. Thus, if look-through or conduit treatment is desirable, it will be important to remove the charity as a potential beneficiary prior to Determination Date following the owner's death.

Withdrawing from the account to satisfy bequests under the will results in income being taxed to the estate. A corresponding charitable deduction should offset the income, if the withdrawn amount is paid, or, in the case of estates, "permanently set aside" for charity. IRC § 642(c). The IRS has ruled that IRA income taxable to the estate as a result of IRA withdrawals will be considered "permanently set aside" for the charitable residuary beneficiary if all other beneficiaries have been satisfied. *See* PLR 200336020. However, it may be difficult to demonstrate eligibility for the offsetting deduction with respect to pre-residuary bequests.

In approving perhaps a better approach, the Service ruled than an executor of an estate may "assign" a decedent's IRA to charities to satisfy the estate's charitable bequests. PLR 200234019. Doing so did not result in income being treated as received in the estate; the IRD was treated as received by the charities, which are of course tax-exempt. The ruling even approved a possible partial assignment of an IRA if the account was in excess of the amount devised to the charities.

As noted above, satisfying a pecuniary bequest with an IRA may result in IRD being accelerated in the estate. This is based on the theory that doing so is no different, from the IRS point of view, from withdrawing cash from the IRA and using the cash to satisfy the pecuniary bequest. Using an IRA to satisfy a fractional bequest should not present the same problems.

f. Charitable Remainder Trust

Naming a CRT as an IRA beneficiary will not generally yield favorable tax results for two primary reasons. First, it appears to be the Service's position that the IRD deduction under §691(c) is, generally speaking, not directly available to the unitrust or annuity beneficiary of the trust (See PLR 199901023). Second, the estate tax deduction for amounts payable to the trust is limited to the actuarial value of the charity's remainder interest.

What are the exceptions to the this general rule?

g. Charitable Gift Annuity

In PLR 200230018, the decedent IRA owner made a charity the beneficiary of the IRA. Pursuant to a separate "Gift Annuity Agreement" the decedent and charity agreed that the testamentary gift of the IRA was in exchange for the gift annuity payable to the annuitant, if the annuitant survives the decedent. The IRS ruled that the charity's exempt status is not adversely affected by receipt of the IRA in exchange for the gift annuity, the charity will not have UBTI, the value of the IRA is includable in the decedent's estate, a charitable estate tax deduction is allowed for the value of the IRA less the value of the gift annuity, the IRA is not IRD to the decedent's estate, and the IRA is IRD to the charity when distributed, but the charity is exempt from income tax.

h. Charitable Lead Trust.

Naming a CLT as an IRA beneficiary could result in a larger estate tax deduction, due to the ability to "zero-out" a CLAT. See Babitz, Brune, Pappaterra, and Demmerly, *Selected Strategies for Dealing with Non-Diversified Wealth*, EST. PLAN., December, 2000, at 468. But, a CLAT is not tax-exempt, so any IRA distributions to the CLAT would result in taxable ordinary income to the CLAT, which would usually be only partially offset by the charitable lead payment. In addition, a CLAT could never qualify as a "designated beneficiary," meaning the deceased owner's remaining actuarial life expectancy or the five-year rule would be used to determine MRDs. Finally, as a practical matter, the IRA is unavailable to the owner's family members during the charitable lead term, and may not be available at all unless the assets outperform the annuity requirement.

D. Other Estate Planning Considerations

1. Uniform Principal And Income Act.

The Uniform Principal and Income Act (UPAIA) sets forth a new set of rules for allocating MRDs from IRAs between income and principal. Section 409 of the UPAIA provides that if the governing instrument is silent and no part of the payment is characterized as interest or a dividend, the trustee is to allocate 10% of any payment all or part of which is required to be made (MRD) to income and the balance to principal. If no part of the payment is required to be made (a voluntary withdrawal), or if the payment is the entire amount the trustee is to receive, the payment is allocated all to principal.

> "**SECTION 409. DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS.**[13]
>
> (a) In this section, "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer, including a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.
>
> (b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the

[13] UNIFORM PRINCIPAL AND INCOME ACT (1997), National Conference of Commissioners on Uniform State Laws (1997).

payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(e) This section does not apply to payments to which Section 410 applies.

Comment

Scope. Section 409 applies to amounts received under contractual arrangements that provide for payments to a third party beneficiary as a result of services rendered or property transferred to the payer. While the right to receive such payments is a liquidating asset of the kind described in Section 410 (i.e., "an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration"), these payment rights are covered separately in Section 409 because of their special characteristics.

Section 409 applies to receipts from all forms of annuities and deferred compensation arrangements, whether the payment will be received by the trust in a lump sum or in installments over a period of years. It applies to bonuses that may be received over two or three years and payments that may last for much longer periods, including payments from an individual retirement account (IRA), deferred compensation plan (whether qualified or not qualified for special federal income tax treatment), and insurance renewal commissions. It applies to a retirement plan to which the settlor has made contributions, just as it applies to an annuity policy that the settlor may have purchased individually, and it applies to variable annuities, deferred annuities, annuities issued by commercial insurance companies, and "private annuities" arising from the sale of property to another individual or entity in exchange for payments that are to be made for the life of one or more individuals. The section applies whether the payments begin when the payment right becomes subject to the trust or are deferred until a future date, and it applies whether payments are made in cash or in kind, such as employer stock (in-kind payments usually will be made in a single distribution that will be allocated to principal under the second sentence of subsection (c))."

To qualify under the conduit trust approach, the trust instrument should expressly abrogate the effect of Section 409. Also, state that the power of adjustment provisions and unitrust provisions under the new UPAIA do not apply. **Review all existing trusts and beneficiary arrangements for UPAIA concerns.**

2. Separate Share Rule of IRC § 663(c)

"(3) INCOME IN RESPECT OF A DECEDENT.[14]

> This paragraph (b)(3) governs the allocation of the portion of gross income includible in distributable net income that is income in respect of a decedent within the meaning of section 691(a) and is not income within the meaning of section 643(b). Such gross income is allocated among the separate shares that could potentially be funded with these amounts irrespective of whether the share is entitled to receive any income under the terms of the governing instrument or applicable local law. The amount of such gross income allocated to each share is based on the relative value of each share that could potentially be funded with such amounts."

3. Estate Tax Apportionment

Typically, if the IRA owner wants to preserve the longest post-death payout for the account, estate taxes have to be apportioned to other assets.

4. Creditor Protection.

IRAs may not be as protected from the claims of creditors as you thought. In *Lampkins v. Golden*, 2002 TNT 53-16 (6th Cir., March 19, 2002), an unpublished opinion, the U.S. Court of Appeals for the Sixth Circuit ruled that Michigan's statute to protect IRAs from the claims of creditors is preempted by ERISA, which does not provide creditor protection to IRAs. *See* Golden, *Piercing Shield Laws To Garnish SEP-IRAs*, Trusts & Estates, p. 51 (August 2002). *See generally*, Fla. Stat. § 222.21 (exempts IRAs from creditors claims).

5. Elective Share Law.

See Lynch, *Marriage, Minimum Distributions, and Mayhem: A Discussion of IRAs under Florida's New Elective Share Statute,* Fla. Bar Journal (June '02 issue).

6. Plan for the Owner's Incapacity.

IRA owners need to contemplate their retirement accounts in their durable powers of attorney. In addition to authorizing the agent to take the MRDs, the powers should

[14] Treas. Reg. § 1.663(c)-2(b)(3).

grant authority for the agent to change the investments and account custodians, create and fund new retirement accounts, and rollover accounts. The agent should also have the authority to accelerate distributions. That power may come in handy for purposes of making gifts to save transfer taxes or for converting to a Roth IRA. Be careful, however, with giving the agent the power to change the beneficiary, which could be tantamount to the power to rewrite the owner's "Will." Natalie Choate suggests specifying in the durable power of attorney who is to be the beneficiary.[15] Perhaps another solution is to require the beneficiaries be consistent with the owner's Will provisions.

7. Prepare Custom Beneficiary Designations.

Prepare your own IRA beneficiary designations that specify the client's primary and secondary beneficiaries. You will also need to indicate what happens in the event of a disclaimer or simultaneous death, as well as what happens on the death of a beneficiary who survives the owner but dies prior to the account being fully distributed. Usually, you would also want to provide in your beneficiary designation that each beneficiary may change investments, custodians, or trustees, and may accelerate distributions at any time. If appropriate, cover the creation of separate accounts or shares following the owner's death. Rarely does the standard IRA account agreement and beneficiary designation form provided by the financial institution cover all of these issues.

You'll need to send the custom beneficiary designation document to the IRA custodian or trustee and ask it to acknowledge receipt. Keep in mind that many of the financial institutions are not set up or staffed to receive such custom documents. Some IRA custodians, worried about their own liability, are often inflexible in allowing deviation from the strict or narrow interpretation of their IRA account agreements. Accordingly, the IRA custodian might refuse to allow some portion or all of your custom beneficiary designation, if its account agreement does not expressly authorize each item. This is a good reason to check the terms of the underlying IRA account agreement. There is, however, a growing movement within the financial institutions to allow the flexibility needed to properly plan for IRAs of significant size.

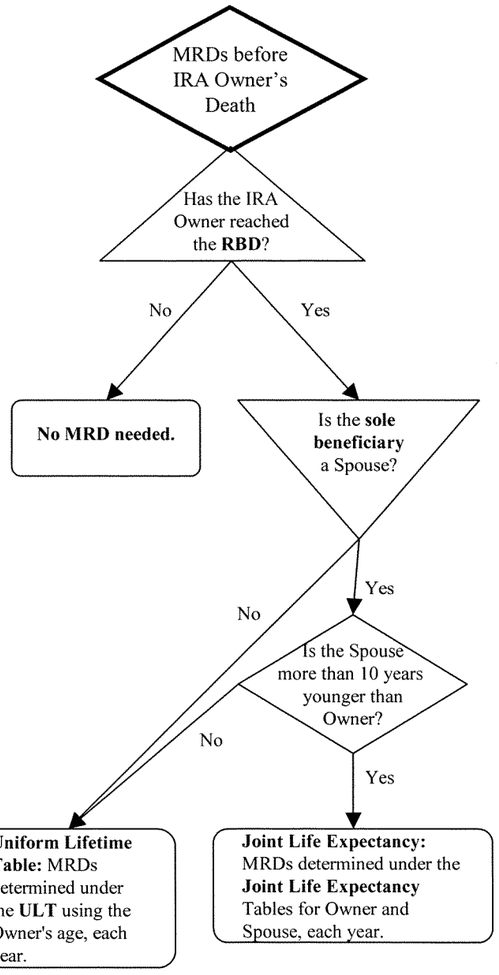
[15] Choate, *Selected Practical Planning Pointers for Your Client's Retirement Benefits*, p.29-30, ACTEC 2004 Annual Meeting (San Antonio 2004).

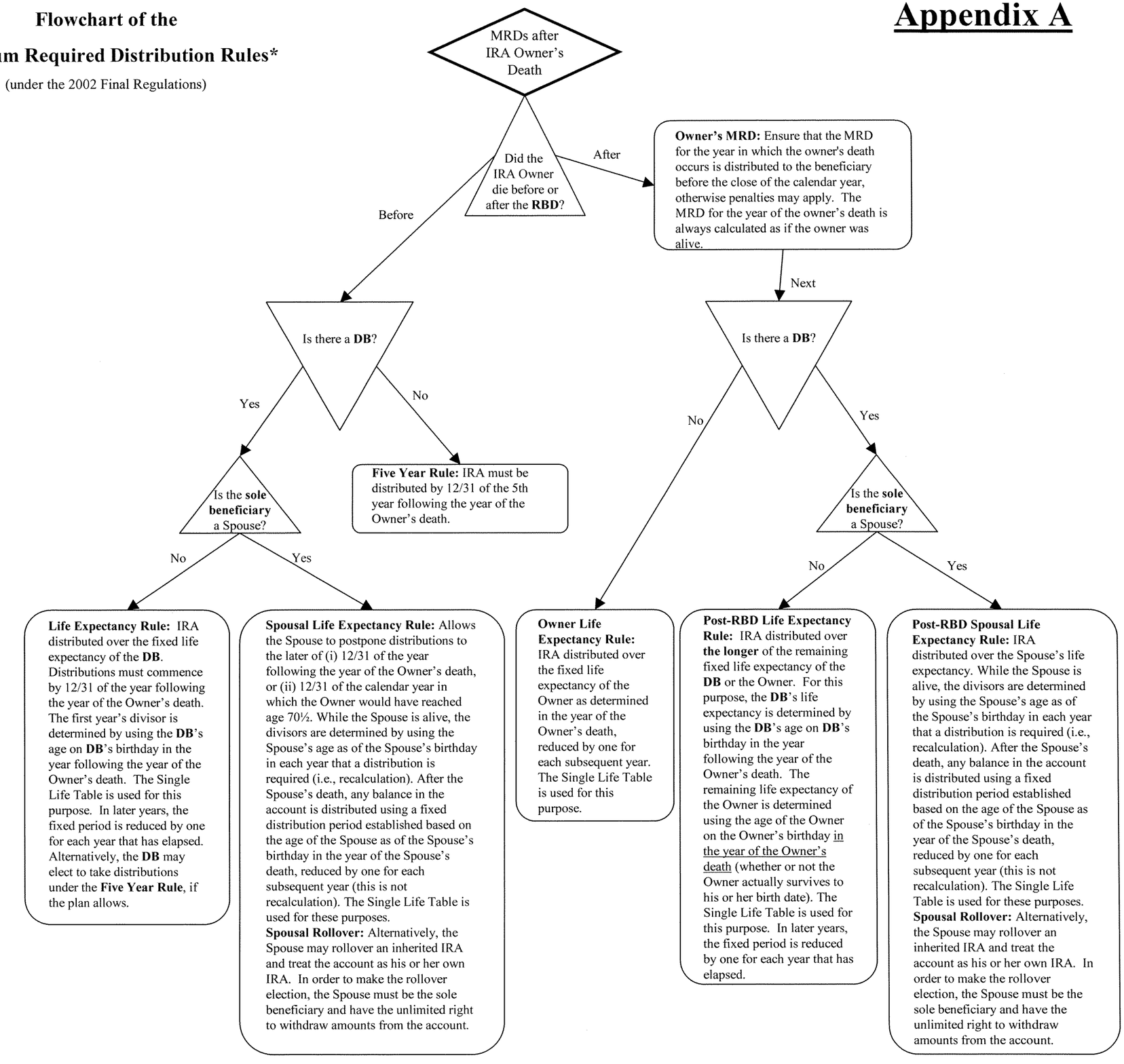
Appendix A

Flowchart of the

Minimum Required Distribution Rules*

(under the 2002 Final Regulations)





Legend

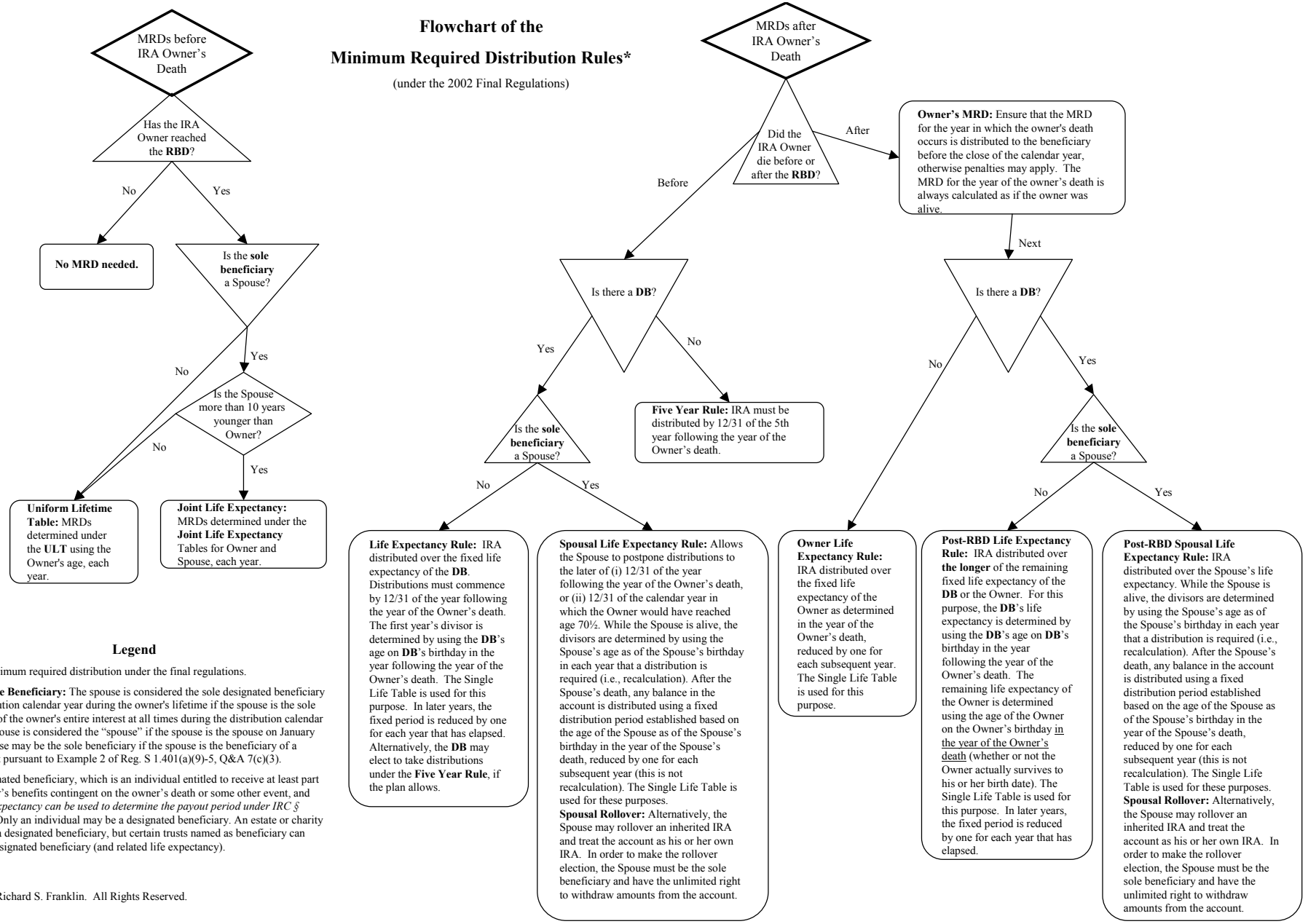
•**MRD:** Minimum required distribution under the final regulations.

•**Spouse Sole Beneficiary:** The spouse is considered the sole designated beneficiary for a distribution calendar year during the owner's lifetime if the spouse is the sole beneficiary of the owner's entire interest at all times during the distribution calendar year. The spouse is considered the "spouse" if the spouse is the spouse on January 1. The spouse may be the sole beneficiary if the spouse is the beneficiary of a conduit trust pursuant to Example 2 of Reg. S 1.401(a)(9)-5, Q&A 7(c)(3).

•**DB:** Designated beneficiary, which is an individual entitled to receive at least part of the owner's benefits contingent on the owner's death or some other event, and *whose life expectancy can be used to determine the payout period under IRC § 401(a)(9)*. Only an individual may be a designated beneficiary. An estate or charity may not be a designated beneficiary, but certain trusts named as beneficiary can provide a designated beneficiary (and related life expectancy).

Flowchart of the Minimum Required Distribution Rules*

(under the 2002 Final Regulations)

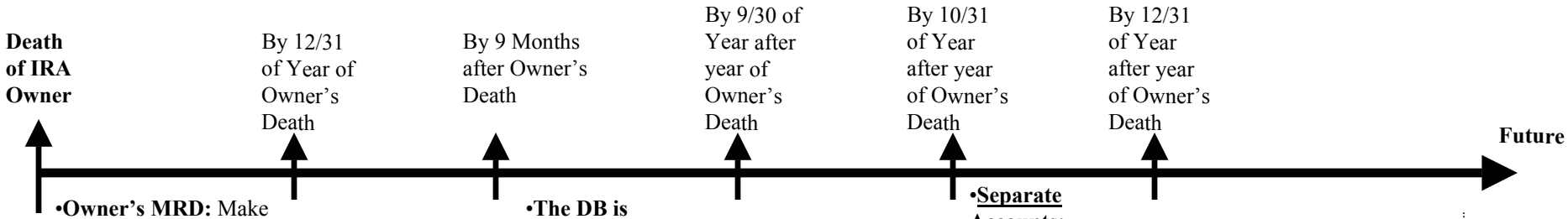


Legend

•**MRD:** Minimum required distribution under the final regulations.

•**Spouse Sole Beneficiary:** The spouse is considered the sole designated beneficiary for a distribution calendar year during the owner's lifetime if the spouse is the sole beneficiary of the owner's entire interest at all times during the distribution calendar year. The spouse is considered the "spouse" if the spouse is the spouse on January 1. The spouse may be the sole beneficiary if the spouse is the beneficiary of a conduit trust pursuant to Example 2 of Reg. S 1.401(a)(9)-5, Q&A 7(c)(3).

•**DB:** Designated beneficiary, which is an individual entitled to receive at least part of the owner's benefits contingent on the owner's death or some other event, and *whose life expectancy can be used to determine the payout period under IRC § 401(a)(9)*. Only an individual may be a designated beneficiary. An estate or charity may not be a designated beneficiary, but certain trusts named as beneficiary can provide a designated beneficiary (and related life expectancy).



•Owner's MRD: Make the Owner's final MRD.

•Consider Prompt Spousal Rollover: If spouse is elderly or in poor health, a prompt rollover may be advisable to allow for adjustments in the beneficiary designation, if necessary. A personal representative cannot implement a spousal rollover.

•Disclaimers: Implement any qualified disclaimers that may be designed to affect the MRDs.

•Cash Outs: Begin steps necessary to calculate shares and determine payee information in cases where a beneficiary is to be paid its full share by 9/30 of the year following death (e.g. charity).

•The DB is determined.

•Persons who were beneficiaries as of the Owner's death, but are not beneficiaries as of 9/30 of the year following the year of the Owner's death because of a qualified disclaimer, cash out distribution, or establishment of separate accounts (but not death of the beneficiary) are ignored.

•Separate Accounts: Separate accounts must be established for purposes of establishing who is the designated beneficiary.

•Trust documentation must be provided to the IRA custodian or trustee to qualify under the trust rules to allow designated beneficiary status through a trust.

•Separate Accounts: Separate accounts must be established for purposes of determining the MRD period.

•Beneficiary's MRD: Make the first distribution to the beneficiary under the life expectancy rules.

•Five-Year Rule: 12/31 of the 5th year following the year of the Owner's death under the Five Year Rule.

•Separate Accounts: If established by 12/31 of any year following the owner's death, separate accounts may be used in the following year for purposes of allocating investment gains and losses separately.

Appendix C

Inherited IRAs --- Switching to the New Rules*

Legend:

MRD: Minimum Required Distribution
RBD: Requied Beginning Date
FDY: First Distribution Year
DOD: Date of Death
DB: Designated Beneficiary
DY: Determination Year
LE: Life Expectancy

Example 1

Fact Pattern	
IRA Owner's RBD	1993
IRA Owner's FDY	1992
IRA Owner's Age in FDY	70
IRA Owner's DOD	1997
Designated Beneficiary	Nephew
DB Age at FDY	40

MRDs Under Old Rules	
MRD Method	Fixed Term
LE Factor for FDY	42.9
LE Factor for 2002	**32.9**

MRDs Under Final Regs	
Determination Year	1998
Beneficiary's Age DY	46
LE Factor for DY	37.9
LE Factor for 2002	**33.9**

Example 2

Fact Pattern	
IRA Owner's RBD	1995
IRA Owner's FDY	1994
IRA Owner's Age in FDY	70
IRA Owner's DOD	1997
Designated Beneficiary	Spouse
Beneficiary Age at FDY	65

MRDs Under Old Rules	
MRD Method	Fixed Term
LE Factor for FDY	23.1
LE Factor for 2002	**15.1**

MRDs Under Final Regs	
Determination Year	1998
Beneficiary's Age DY	5
LE Factor for DY	77.7
LE Factor for 2002	**73.7**

IRA Owner Changed the Beneficiary in June 1996, after the RBD, to his Granddaughter who was 3 years old in 1996.

Example 3

Fact Pattern	
IRA Owner's RBD	1998
IRA Owner's FDY	1997
IRA Owner's Age in FDY	70
IRA Owner's DOD	1998 (May)
Designated Beneficiaries	Brother
DB Age at FDY	75

MRDs Under Old Rules	
MRD Method	Fixed Term
LE Factor for FDY	18.8
LE Factor for 2002	**13.8**

MRDs Under Final Regs -- **Brother's Account (if no disclaimer)**

	Brother	Owner
Determination Year	1999	
Applicable Age	76	71
LE Factor for DY	12.7	16.3
LE Factor for 2002	**9.7**	**12.3**

After the IRA Owner's death, the Brother disclaimed (i.e., qualified disclaimer) the account and it passed by the contingent beneficiary designation to the Brother's two daughters, who were 35 and 38 in 1998 (separate shares were created for the daughters before the end of 1998).

MRDs Under Final Regs -- **Oldest Daughter**	
Determination Year	1999
Beneficiary Age DY	39
LE Factor for DY	44.6
LE Factor for 2002	**41.6**

MRDs Under Final Regs -- Youngest Daughter	
Determination Year	1999
Beneficiary Age DY	36
LE Factor for DY	47.5
LE Factor for 2002	**44.5**

Appendix D

Life Expectancy Tables
(under the Final Regulations 1.401(a)(9)-9)

Uniform Lifetime Table

Owner's Age	Divisor	Multiplier
70	27.4	3.649635
71	26.5	3.773585
72	25.6	3.906250
73	24.7	4.048583
74	23.8	4.201681
75	22.9	4.366812
76	22	4.545455
77	21.2	4.716981
78	20.3	4.926108
79	19.5	5.128205
80	18.7	5.347594
81	17.9	5.586592
82	17.1	5.847953
83	16.3	6.134969
84	15.5	6.451613
85	14.8	6.756757
86	14.1	7.092199
87	13.4	7.462687
88	12.7	7.874016
89	12	8.333333
90	11.4	8.771930
91	10.8	9.259259
92	10.2	9.803922
93	9.6	10.416667
94	9.1	10.989011
95	8.6	11.627907
96	8.1	12.345679
97	7.6	13.157895
98	7.1	14.084507
99	6.7	14.925373
100	6.3	15.873016
101	5.9	16.949153
102	5.5	18.181818
103	5.2	19.230769
104	4.9	20.408163
105	4.5	22.222222
106	4.2	23.809524
107	3.9	25.641026
108	3.7	27.027027
109	3.4	29.411765
110	3.1	32.258065
111	2.9	34.482759
112	2.6	38.461538
113	2.4	41.666667
114	2.1	47.619048
115 +	1.9	52.631579

Single Life Table

Owner's Age	Divisor	Multiplier	Owner's Age	Divisor	Multiplier	Owner's Age	Divisor	Multiplier
0	82.4	1.213592	46	37.9	2.638522	92	4.9	20.408163
1	81.6	1.225490	47	37.0	2.702703	93	4.6	21.739130
2	80.6	1.240695	48	36.0	2.777778	94	4.3	23.255814
3	79.7	1.254705	49	35.1	2.849003	95	4.1	24.390244
4	78.7	1.270648	50	34.2	2.923977	96	3.8	26.315789
5	77.7	1.287001	51	33.3	3.003003	97	3.6	27.777778
6	76.7	1.303781	52	32.3	3.095975	98	3.4	29.411765
7	75.8	1.319261	53	31.4	3.184713	99	3.1	32.258065
8	74.8	1.336898	54	30.5	3.278689	100	2.9	34.482759
9	73.8	1.355014	55	29.6	3.378378	101	2.7	37.037037
10	72.8	1.373626	56	28.7	3.484321	102	2.5	40.000000
11	71.8	1.392758	57	27.9	3.584229	103	2.3	43.478261
12	70.8	1.412429	58	27.0	3.703704	104	2.1	47.619048
13	69.9	1.430615	59	26.1	3.831418	105	1.9	52.631579
14	68.9	1.451379	60	25.2	3.968254	106	1.7	58.823529
15	67.9	1.472754	61	24.4	4.098361	107	1.5	66.666667
16	66.9	1.494768	62	23.5	4.255319	108	1.4	71.428571
17	66.0	1.515152	63	22.7	4.405286	109	1.2	83.333333
18	65.0	1.538462	64	21.8	4.587156	110	1.1	90.909091
19	64.0	1.562500	65	21.0	4.761905	111+	1.0	100
20	63.0	1.587302	66	20.2	4.950495			
21	62.1	1.610306	67	19.4	5.154639			
22	61.1	1.636661	68	18.6	5.376344			
23	60.1	1.663894	69	17.8	5.617978			
24	59.1	1.692047	70	17.0	5.882353			
25	58.2	1.718213	71	16.3	6.134969			
26	57.2	1.748252	72	15.5	6.451613			
27	56.2	1.779359	73	14.8	6.756757			
28	55.3	1.808318	74	14.1	7.092199			
29	54.3	1.841621	75	13.4	7.462687			
30	53.3	1.876173	76	12.7	7.874016			
31	52.4	1.90839695	77	12.1	8.264463			
32	51.4	1.945525	78	11.4	8.771930			
33	50.4	1.984127	79	10.8	9.259259			
34	49.4	2.024291	80	10.2	9.803922			
35	48.5	2.061856	81	9.7	10.309278			
36	47.5	2.105263	82	9.1	10.989011			
37	46.5	2.150538	83	8.6	11.627907			
38	45.6	2.192982	84	8.1	12.345679			
39	44.6	2.242152	85	7.6	13.157895			
40	43.6	2.293578	86	7.1	14.084507			
41	42.7	2.341920	87	6.7	14.925373			
42	41.7	2.398082	88	6.3	15.873016			
43	40.7	2.457002	89	5.9	16.949153			
44	39.8	2.512563	90	5.5	18.181818			
45	38.8	2.577320	91	5.2	19.230769			

Joint Life Table

(Condensed for Determining Joint Life Expectancy for Owner and Spouse more than 10 Years Younger)

Owner's Age	Spouse's Age →																			
	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37
70	65.1	64.1	63.1	62.2	61.2	60.2	59.3	58.3	57.3	56.4	55.4	54.4	53.5	52.5	51.6	50.6	49.7	48.7	47.8	46.8
71	65.1	64.1	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.4	55.4	54.4	53.5	52.5	51.6	50.6	49.6	48.7	47.7	46.8
72	65.1	64.1	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.3	55.4	54.4	53.5	52.5	51.5	50.6	49.6	48.7	47.7	46.8
73	65	64.1	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.3	55.4	54.4	53.4	52.5	51.5	50.6	49.6	48.6	47.7	46.7
74	65	64.1	63.1	62.1	61.2	60.2	59.2	58.2	57.3	56.3	55.4	54.4	53.4	52.5	51.5	50.5	49.6	48.6	47.7	46.7
75	65	64.1	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4	53.4	52.5	51.5	50.5	49.6	48.6	47.7	46.7
76	65	64.1	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4	53.4	52.4	51.5	50.5	49.6	48.6	47.6	46.7
77	65	64.1	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.7
78	65	64	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.6
79	65	64	63.1	62.1	61.1	60.2	59.2	58.2	57.2	56.3	55.3	54.3	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.6
80	65	64	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6
81	65	64	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6
82	65	64	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6
83	65	64	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6
84	65	64	63	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6
85	65	64	63	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
86	65	64	63	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
87	65	64	63	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
88	65	64	63	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
89	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
90	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
91	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
92	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
93	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
94	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6
95	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
96	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
97	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
98	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
99	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
100	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
101	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
102	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
103	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
104	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
105	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
106	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
107	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
108	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
109	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
110	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
111	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
112	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
113	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
114	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5
115+	65	64	63	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5

Appendix D

Life Expectancy Tables
(under the Final Regulations 1.401(a)(9)-9)

Joint Life Table

(Condensed for Determining Joint Life Expectancy for Owner and Spouse more than 10 Years Younger)

Owner's Age / Spouse's Age →	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74
70	45.9	44.9	44	43.1	42.2	41.3	40.3	39.4	38.6	37.7	36.8	35.9	35.1	34.3	33.4	32.6	31.8	31.1	30.3	29.5	28.8	28.1	27.4														
71	45.9	44.9	44	43	42.1	41.2	40.3	39.4	38.5	37.6	36.7	35.9	35	34.2	33.3	32.5	31.7	30.9	30.1	29.4	28.6	27.9	27.2	26.5													
72	45.8	44.9	43.9	43	42.1	41.1	40.2	39.3	38.4	37.5	36.6	35.8	34.9	34.1	33.2	32.4	31.6	30.8	30	29.2	28.4	27.7	27	26.3	25.6												
73	45.8	44.8	43.9	43	42	41.1	40.2	39.3	38.4	37.5	36.6	35.7	34.8	34	33.1	32.3	31.5	30.6	29.8	28.1	28.3	27.5	26.8	26.1	25.4	24.7											
74	45.8	44.8	43.9	42.9	42	41.1	40.1	39.2	38.3	37.4	36.5	35.6	34.8	33.9	33	32.2	31.4	30.5	29.7	28.9	28.1	27.4	26.6	25.9	25.2	24.5	23.8										
75	45.7	44.8	43.8	42.9	42	41	40.1	39.2	38.3	37.4	36.5	35.6	34.7	33.8	33	32.1	31.3	30.4	29.6	28.8	28	27.2	26.5	25.7	25	24.3	23.6	22.9									
76	45.7	44.8	43.8	42.9	41.9	41	40.1	39.1	38.2	37.3	36.4	35.5	34.6	33.8	32.9	32	31.2	30.3	29.5	28.7	27.9	27.1	26.3	25.6	24.8	24.1	23.4	22.7	22								
77	45.7	44.8	43.8	42.9	41.9	41	40	39.1	38.2	37.3	36.4	35.5	34.6	33.7	32.8	32	31.1	30.3	29.4	28.6	27.8	27	26.2	25.4	24.7	23.9	23.2	22.5	21.8	21.2							
78	45.7	44.7	43.8	42.8	41.9	40.9	40	39.1	38.2	37.2	36.3	35.4	34.5	33.6	32.8	31.9	31	30.2	29.3	28.5	27.7	26.9	26.1	25.3	24.6	23.8	23.1	22.4	21.7	21	20.3						
79	45.7	44.7	43.8	42.8	41.9	40.9	40	39.1	38.1	37.2	36.3	35.4	34.5	33.6	32.7	31.8	31	30.1	29.3	28.4	27.6	26.8	26	25.2	24.4	23.7	22.9	22.2	21.5	20.8	20.1	19.5					
80	45.7	44.7	43.7	42.8	41.8	40.9	40	39	38.1	37.2	36.3	35.4	34.5	33.6	32.7	31.8	30.9	30.1	29.2	28.3	27.5	26.7	25.9	25.1	24.3	23.6	22.8	22.1	21.3	20.6	20	19.3	18.7				
81	45.7	44.7	43.7	42.8	41.8	40.9	39.9	39	38.1	37.2	36.2	35.3	34.4	33.5	32.6	31.8	30.9	30	29.2	28.3	27.5	26.6	25.8	25	24.2	23.4	22.7	21.9	21.2	20.5	19.8	19.1	18.5	17.9			
82	45.6	44.7	43.7	42.8	41.8	40.9	39.9	39	38.1	37.1	36.2	35.3	34.4	33.5	32.6	31.7	30.8	30	29.1	28.3	27.4	26.6	25.8	24.9	24.1	23.4	22.6	21.8	21.1	20.4	19.7	19	18.3	17.7	17.1		
83	45.6	44.7	43.7	42.8	41.8	40.9	39.9	39	38	37.1	36.2	35.3	34.4	33.5	32.6	31.7	30.8	29.9	29.1	28.2	27.4	26.5	25.7	24.9	24.1	23.3	22.5	21.7	21	20.2	19.5	18.8	18.2	17.5	16.9	16.3	
84	45.6	44.7	43.7	42.7	41.8	40.8	39.9	39	38	37.1	36.2	35.3	34.3	33.4	32.5	31.7	30.8	29.9	29	28.2	27.3	26.5	25.6	24.8	24	23.2	22.4	21.6	20.9	20.1	19.4	18.7	18	17.4	16.7	16.1	15.5
85	45.6	44.7	43.7	42.7	41.8	40.8	39.9	38.9	38	37.1	36.2	35.2	34.3	33.4	32.5	31.6	30.7	29.8	29	28.1	27.3	26.4	25.6	24.8	23.9	23.1	22.3	21.6	20.8	20.1	19.3	18.6	17.9	17.3	16.6	16	15.4
86	45.6	44.6	43.7	42.7	41.8	40.8	39.9	38.9	38	37.1	36.1	35.2	34.3	33.4	32.5	31.6	30.7	29.8	29	28.1	27.2	26.4	25.5	24.7	23.9	23.1	22.3	21.5	20.7	20	19.2	18.5	17.8	17.1	16.5	15.8	15.2
87	45.6	44.6	43.7	42.7	41.8	40.8	39.9	38.9	38	37	36.1	35.2	34.3	33.4	32.5	31.6	30.7	29.8	28.9	28.1	27.2	26.4	25.5	24.7	23.8	23	22.2	21.4	20.7	19.9	19.2	18.4	17.7	17	16.4	15.7	15.1
88	45.6	44.6	43.7	42.7	41.8	40.8	39.9	38.9	38	37	36.1	35.2	34.3	33.4	32.5	31.6	30.7	29.8	28.9	28	27.2	26.3	25.5	24.6	23.8	23	22.2	21.4	20.6	19.8	19.1	18.3	17.6	16.9	16.3	15.6	15
89	45.6	44.6	43.7	42.7	41.7	40.8	39.8	38.9	38	37	36.1	35.2	34.3	33.3	32.4	31.5	30.7	29.8	28.9	28	27.2	26.3	25.4	24.6	23.8	22.9	22.1	21.3	20.5	19.8	19	18.3	17.6	16.9	16.2	15.5	14.9
90	45.6	44.6	43.7	42.7	41.7	40.8	39.8	38.9	38	37	36.1	35.2	34.2	33.3	32.4	31.5	30.6	29.7	28.9	28	27.1	26.3	25.4	24.6	23.7	22.9	22.1	21.3	20.5	19.7	19	18.2	17.5	16.8	16.1	15.4	14.8
91	45.6	44.6	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.9	28	27.1	26.3	25.4	24.5	23.7	22.9	22.1	21.3	20.5	19.7	18.9	18.2	17.4	16.7	16	15.4	14.7
92	45.6	44.6	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	28	27.1	26.2	25.4	24.5	23.7	22.9	22	21.2	20.4	19.6	18.9	18.1	17.4	16.7	16	15.3	14.6
93	45.6	44.6	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	28	27.1	26.2	25.4	24.5	23.7	22.8	22	21.2	20.4	19.6	18.8	18.1	17.3	16.6	15.9	15.2	14.6
94	45.6	44.6	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.1	26.2	25.3	24.5	23.6	22.8	22	21.2	20.4	19.6	18.8	18	17.3	16.6	15.9	15.2	14.5
95	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.1	26.2	25.3	24.5	23.6	22.8	22	21.1	20.3	19.6	18.8	18	17.3	16.5	15.8	15.1	14.5
96	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27	26.2	25.3	24.5	23.6	22.8	21.9	21.1	20.3	19.5	18.8	18	17.2	16.5	15.8	15.1	14.4
97	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36.1	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27	26.2	25.3	24.5	23.6	22.8	21.9	21.1	20.3	19.5	18.7	18	17.2	16.5	15.8	15.1	14.4
98	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27	26.2	25.3	24.4	23.6	22.8	21.9	21.1	20.3	19.5	18.7	17.9	17.2	16.4	15.7	15	14.3
99	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27	26.2	25.3	24.4	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9	17.2	16.4	15.7	15	14.3
100	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27	26.1	25.3	24.4	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9	17.1	16.4	15.7	15	14.3
101	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36	35.1	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27	26.1	25.3	24.4	23.6	22.7	21.9	21.1	20.2	19.4	18.7	17.9	17.1	16.4	15.6	14.9	14.2
102	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36	35.1	34.2	33.3	32.4	31.4	30.5	29.7	28.8	27.9	27	26.1	25.3	24.4	23.6	22.7	21.9	21.1	20.2	19.4	18.6	17.9	17.1	16.4	15.6	14.9	14.2
103	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37	36	35.1	34.2	33.3	32.4	31.4	30.5	29.7	28.8	27.9	27	26.1	25.3	24.4	23.6	22.7	21.9	21	20.2	19.4	18.6	17.9	17.1	16.3	15.6	14.9	14.2
104	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.4	31.4	30.5	29.6	28.8	27.9	27	26.1	25.3	24.4	23.5	22.7	21.9	21	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.9	14.2
105	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27	26.1	25.3	24.4	23.5	22.7	21.9	21	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.9	14.2
106	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27	26.1	25.3	24.4	23.5	22.7	21.9	21	20.2	19.4	18.6	17.8	17.1	16.3	15.6	14.8	14.1
107	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.6	14.8	14.1
108	45.6	44.6	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
109	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
110	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
111	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
112	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
113	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
114	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1
115+	45.6	44.6	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37	36	35.1	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27	26.1	25.2	24.4	23.5	22.7	21.8	21	20.2	19.4	18.6	17.8	17	16.3	15.5	14.8	14.1

The numbers shown in the bold boxes are the same as those comprising the Uniform Life Table (i.e., owner is 10 years older than beneficiary). This illustrates that the ULT is based on the joint life expectancy of the owner and a hypothetical beneficiary 10 years younger, with recalculation.

Appendix D

Life Expectancy Tables
(under the Final Regulations 1.401(a)(9)-9)

Joint Life Table

(Condensed for Determining Joint Life Expectancy for Owner and Spouse more than 10 Years Younger)

Owner's Age \ Spouse's Age	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105
70																															
71																															
72																															
73																															
74																															
75																															
76																															
77																															
78																															
79																															
80																															
81																															
82																															
83																															
84																															
85	14.8																														
86	14.6	14.1																													
87	14.5	13.9	13.4																												
88	14.4	13.8	13.2	12.7																											
89	14.3	13.7	13.1	12.6	12																										
90	14.2	13.6	13	12.4	11.9	11.4																									
91	14.1	13.5	12.9	12.3	11.8	11.3	10.8																								
92	14	13.4	12.8	12.2	11.7	11.2	10.7	10.2																							
93	13.9	13.3	12.7	12.1	11.6	11.1	10.6	10.1	9.6																						
94	13.9	13.2	12.6	12	11.5	11	10.5	10	9.5	9.1																					
95	13.8	13.2	12.6	12	11.4	10.9	10.4	9.9	9.4	9	8.6																				
96	13.8	13.1	12.5	11.9	11.3	10.8	10.3	9.8	9.3	8.9	8.5	8.1																			
97	13.7	13.1	12.5	11.9	11.3	10.7	10.2	9.7	9.2	8.8	8.4	8	7.6																		
98	13.7	13	12.4	11.8	11.2	10.7	10.1	9.6	9.2	8.7	8.3	7.9	7.5	7.1																	
99	13.6	13	12.4	11.8	11.2	10.6	10.1	9.6	9.1	8.6	8.2	7.8	7.4	7	6.7																
100	13.6	12.9	12.3	11.7	11.1	10.6	10	9.5	9	8.5	8.1	7.7	7.3	6.9	6.6	6.3															
101	13.6	12.9	12.3	11.7	11.1	10.5	10	9.4	9	8.5	8	7.6	7.2	6.9	6.5	6.2	5.9														
102	13.5	12.9	12.2	11.6	11	10.5	9.9	9.4	8.9	8.4	8	7.5	7.1	6.8	6.4	6.1	5.8	5.5													
103	13.5	12.9	12.2	11.6	11	10.4	9.9	9.4	8.8	8.4	7.9	7.5	7.1	6.7	6.3	6	5.7	5.4	5.2												
104	13.5	12.8	12.2	11.6	11	10.4	9.8	9.3	8.8	8.3	7.9	7.4	7	6.6	6.3	5.9	5.6	5.4	5.1	4.9											
105	13.5	12.8	12.2	11.5	10.9	10.4	9.8	9.3	8.8	8.3	7.8	7.4	7	6.6	6.2	5.9	5.6	5.3	5	4.8	4.5										
106	13.5	12.8	12.2	11.5	10.9	10.3	9.8	9.2	8.7	8.2	7.8	7.3	6.9	6.5	6.2	5.8	5.5	5.2	4.9	4.7	4.5	4.2									
107	13.4	12.8	12.1	11.5	10.9	10.3	9.8	9.2	8.7	8.2	7.7	7.3	6.9	6.5	6.1	5.8	5.4	5.1	4.9	4.6	4.4	4.2	3.9								
108	13.4	12.8	12.1	11.5	10.9	10.3	9.7	9.2	8.7	8.2	7.7	7.3	6.8	6.8	6.1	5.7	5.4	5.1	4.8	4.6	4.3	4.1	3.9	3.7							
109	13.4	12.8	12.1	11.5	10.9	10.3	9.7	9.2	8.7	8.2	7.7	7.2	6.8	6.4	6	5.7	5.3	5	4.8	4.5	4.3	4	3.8	3.6	3.4						
110	13.4	12.7	12.1	11.5	10.9	10.3	9.7	9.2	8.6	8.1	7.7	7.2	6.8	6.4	6	5.6	5.3	5	4.7	4.5	4.2	4	3.8	3.5	3.3	3.1					
111	13.4	12.7	12.1	11.5	10.8	10.3	9.7	9.1	8.6	8.1	7.6	7.2	6.8	6.3	6	5.6	5.3	5	4.7	4.4	4.2	3.9	3.7	3.5	3.3	3.1	2.9				
112	13.4	12.7	12.1	11.5	10.8	10.2	9.7	9.1	8.6	8.1	7.6	7.2	6.7	6.3	5.9	5.6	5.3	4.9	4.7	4.4	4.1	3.9	3.7	3.5	3.2	3	2.8	2.6			
113	13.4	12.7	12.1	11.4	10.8	10.2	9.7	9.1	8.6	8.1	7.6	7.2	6.7	6.3	5.9	5.6	5.2	4.9	4.6	4.4	4.1	3.9	3.6	3.4	3.2	3	2.8	2.6	2.4		
114	13.4	12.7	12.1	11.4	10.8	10.2	9.7	9.1	8.6	8.1	7.6	7.1	6.7	6.3	5.9	5.6	5.2	4.9	4.6	4.3	4.1	3.9	3.6	3.4	3.2	3	2.7	2.5	2.3	2.1	
115+	13.4	12.7	12.1	11.4	10.8	10.2	9.7	9.1	8.6	8.1	7.6	7.1	6.7	6.3	5.9	5.5	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.4	3.1	2.9	2.7	2.5	2.3	2.1	1.9

The numbers shown in the bold boxes are the same as those comprising the Uniform Life Table (i.e., owner is 10 years older than beneficiary). This illustrates that the ULT is based on the joint life expectancy of the owner and a hypothical beneficiary 10 years younger, with recalculation.