ESTATE AND INCOME TAX PLANNING FOR RETIREMENT PLANS AND IRAS

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CHAPTER 13

ESTATE PLANNING FOR RETIREMENT PLANS AND IRAS

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§13.1 SCOPE AND COVERAGE

This chapter will analyze the complicated interplay between various federal and Washington state laws that the planner must take into consideration in planning with a client's tax-qualified retirement plan or IRA. Throughout this chapter, references to the Internal Revenue Code, Title 26 U.S.C., will be indicated as I.R.C., and references to Treasury Regulations, Title 26 C.F.R., will be indicated as Treas. Reg.

§13.2 INCOME TAX FACTORS

This section discusses the principal income tax factors that should be considered when selecting the beneficiary of the working spouse's account.

(1) Minimum distribution rules

Assets held by a qualified retirement plan or individual retirement account (IRA) are allowed to grow without being subject to the income tax until distributed to the participant or the participant's beneficiary. I.R.C. §501(a). Thus, clients who do not need current distributions to provide for their support will generally choose to defer receiving distributions as long as possible. Because the primary purpose of exempting the accounts from the federal income tax was to allow taxpayers to accumulate the funds needed for support in retirement, the law includes a complex set of rules that are intended to assure that funds in a retirement account are used for that purpose. I.R.C. 401(a)(9). Clients will most often wish to preserve the option of allowing the funds in an account to grow for the longest possible period. Income tax deferral, of course, is subject to the minimum distribution rules of I.R.C. 401(a)(9) and final Treasury Regulations issued thereunder. The minimum distribution rules establish when distributions must begin and the methodology by which minimum required distributions are calculated both before and after the account holder's death.

- RMD Holiday for 2009. The Pension Act of 2008 added IRC §401(a)(9)(H) under which no RMD is required for the 2009 calendar year from tax-qualified retirement plans under IRC §401(a), 403(b) plans, 457(b) plans of governmental entities (but not 457(b) plans of tax-exempt organizations) and IRAs.

  The holiday is for RMDs required ***for calendar year 2009***. This can lead to interesting results:

  - Example 1. Sam attains age 70½ in 2008 but decides to defer his first RMD (that required for 2008) until April 1, 2009. Under the holiday provisions, Sam must still take the 2008 RMD by April 1, 2009. Sam's second RMD which would have otherwise been required by December 31, 2009, is no longer required.

  - Example 2. Sam attains age 70½ in 2009. The holiday excuses Sam's first RMD (for calendar year 2009). However, Sam's 2010 RMD must be made by December 31, 2010.

For an account holder who had an RMD requirement in 2009, the 2009 distribution is simply missed and the account holder commences again in 2010 based on the account holder's age in 2010 under the Uniform Lifetime Table.

The RMD holiday also applies to inherited IRAs so that an IRA beneficiary who would otherwise have an RMD requirement for the 2009 calendar year, does not have to take the 2009 RMD. Although there would be no RMD in 2009, the divisor for the 2010 RMD and each year's RMD thereafter is still calculated as though the 2009 RMD occurred. In other words, the divisor is still reduced by one (1) for 2009.

If an inherited IRA is subject to the five (5) year payout rule, calendar year 2009 will be disregarded effectively extending the five-year rule by one year.

(a) Required beginning date

Under I.R.C. §401(a)(9), distribution must begin not later than the "required beginning date." Generally, the required beginning date is April 1 of the calendar year following the calendar year in which the participant attains the age of 70 1/2 without regard to the actual date of retirement. However, an individual, other than a five-percent owner (defined at I.R.C. §416), may defer commencement of distribution from a retirement plan (but not an IRA) until April 1 of the calendar year following the calendar year during which the individual terminates employment. I.R.C. §401(a)(9)(C). An individual is a five-percent owner if he owns, with application of the attribution rules of I.R.C. §318, more than five percent of the employer. Moreover, a different required beginning date may apply if an old "§242(b)(2) election" is in place. Treas. Reg. 1.401(a)(9)-8, Q-13, A-13.

For the purpose of *determining* the required beginning date, an employee attains the age of 70 1/2 on the date that is six months after the 70th anniversary of that employee's birth. Treas. Reg. 1.401(a)(9)-2, Q-3, A-3.

Generally, the participant's first "distribution calendar year" is the year the participant attains the age of 70 1/2. Treas. Reg. §1.401(a)(9)-5, Q-1, A-1(b). Thus, if a participant attains the age of 70 1/2 in *2005*, and under the required beginning date rules defers the initial distribution until 2006, two minimum distributions must occur in 2006. The minimum distribution for 2005 must occur by April 1, 2006, and the minimum distribution for 2006 must occur before December 31, 2006.

Distributions pursuant to a valid TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA) §242(b)(2) election do not have to comply with the required beginning date rule. Treas. Reg. §1.401(a)(9)-8, Q-13, A-13. A TEFRA §242(b)(2) election was a transitional election that could only be made on or by December 31, 2003. The election, if properly made and if not revoked, could permit an account holder who is a more than five percent owner of an employer to defer the required beginning date under the employer's retirement plan until the calendar year following the calendar year of retirement.

(b) Distributions while the participant is living

When the account holder is alive on his required beginning date, minimum distributions are made with reference to the Uniform Lifetime Table of Treas. Reg. §1.401(a)(9)-9. This table is as follows:

Uniform Lifetime Table

Age of Account Holder	Distribution Period
70	27.4
71	26.5
72	25.6
73	24.7
74	23.8
75	22.9
76	22.0
77	21.2
78	20.3
79	19.5
80	18.7
81	17.9
82	17.1
83	16.3
84	15.5
85	14.8
86	14.1
87	13.4
88	12.7
89	12.0
90	11.4
91	10.8
92	10.2
93	9.6
94	9.1
95	8.6
96	8.1
97	7.6
98	7.1
99	6.7
100	6.3

To properly apply the Uniform Lifetime Table, the attained age of the account holder in the year in question is used. For example, if the account holder was born in the first half of the year, then he or she will have only attained age 70 in the year he or she reaches age 70 1/2. The first minimum distribution would be 1/27.4. If, by contrast, the account holder's

birthday was in the second half of the calendar year, then he or she would have attained age 71 in the first distribution calendar year and the first minimum distribution would be 1/26.5.

The applicable divisor under the Uniform Lifetime Table is applied to the account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year. For example, if the account holder attains age 70 1/2 in 2010 but defers the first minimum distribution until April 1, 2011, assuming a calendar year plan (or an IRA), the valuation date for the first minimum distribution would be December 31, 2009 (for the 2010 minimum distribution deferred to the required beginning date) and December 31, 2010 (for the 2011 minimum distribution required by December 31, 2011). Treas. Reg. §1.401(a)(9)-5, Q-3, A-3(a). It should be noted that, in the case of a qualified plan on a fiscal year, adjustments may be made for contributions or distributions following the valuation date during the calendar year containing the valuation date. *Id.* However, in the case of an IRA maintaining its records on the calendar year, contributions or adjustments following the December 31 date will not affect the account balance to be used in determining the appropriate minimum distribution for that calendar year. Thus, if one were calculating the minimum distribution for the 2010 calendar year with respect to an IRA, contributions after December 31, 2009 would be disregarded in determining the account balance. Of course, distributions in 2010 would be applied against any further required minimum distribution.

The identity of the account holder's designated beneficiary on the required beginning date is irrelevant with one exception. If the spouse is the sole beneficiary of an account (or when the spouse is the sole beneficiary of a separate account under Treas. Reg. §1.401(a)(9)-8, Q-2, A-2), and the spouse is more than ten years younger than the account holder, the actual joint life expectancy of the participant and spouse under Treas. Reg. §1.401(a)(9)-9, Q-3, A-3, recalculated annually (only during the couple's lifetime), may be used. Treas. Reg. §1.401(a)(9)-5, Q-4, A-4(b). The regulations specify that marital status is determined on January 1 of each year. Treas. Reg. §1.401(a)(9)-5, Q-4, A-4(b)(2). Thus, if the exception is being used and the spouse dies (or the couple divorces) during the calendar year, the account holder would, in the succeeding calendar year, switch to the Uniform Lifetime Table.

To illustrate the effect on the minimum distribution calculations of tying the required beginning date to age 70 1/2, consider the following: If an account holder's date of birth is June 30, 1936, the 70th anniversary of the account holder's birth is June 30, 2006. The account holder attains the age of 70 1/2 on December 30, 2006. In such case, the account holder's first minimum distribution would be due not later than April 1, 2007, and would be the account balance on December 31, 2005, divided by 27.4. If, instead, the account holder's date of birth was July 1, 1936, he or she would be age 70 1/2 on January 1, 2007. This would push the required beginning date off to April 1, 2008; and, because the account holder attained age 71 in the year he or she reached age 70 1/2, the first minimum distribution would be the December 31, 2006, account balance divided by 26.5.

(c) Distributions after death

Under Treas. Reg. §1.401(a)(9)-5, Q-4, A-4, minimum distributions essentially accrue on January 1 of each calendar year. Thus, in the year the account holder dies, the minimum distribution for that year will be calculated under the Uniform Lifetime Table and

distributed no later than December 31 of the year of death. Depending on the language of the applicable plan or IRA document, this distribution belongs to the designated beneficiaries and is taxed to those beneficiaries. As discussed below, postdeath distributions commence in the calendar year following the calendar year of death. In sum, if an account holder dies after his or her required beginning date, there is still a minimum distribution for the year of death in addition to the minimum distribution required for the year after death and each year thereafter. As discussed below, Rev. Rul. 2005-36 permits a beneficiary to receive the decedent's final RMD without such receipt disqualifying a later disclaimer.

The regulations under §401(a)(9) unify, with a few exceptions, the rules applying to the account of a participant who dies either before or after the required beginning date. The key issue is the identity of the beneficiary whose life expectancy, determined under Treas. Reg. §1.401(a)(9)-9, Q-1, A-1, will be used to calculate minimum distributions following the death of the account holder. The beneficiary may be identified in the beneficiary designation of the account holder or pursuant to the terms of the custodial account agreement or the plan (i.e., default provisions). Treas. Reg. §1.401(a)(9)-4, Q-1, A-1. Beneficiaries may be designated by class (i.e., children) as long as the class member with the shortest life expectancy at the time of the account holder's death is identifiable. *Id.*

There are really only two differences between death before versus death after the required beginning date: (i) if the account holder dies before the required beginning date and there is no designated beneficiary as described below (or if there is a beneficiary and the plan or IRA so mandates), the entire account must be distributed within five years under Treas. Reg. §1.401(a)(9)-3, Q-2, A-2 (known as the "Five Year Rule"), and (ii) if the designated beneficiary is the surviving spouse, he or she may defer commencement of minimum distributions until the account holder would have reached age 70 1/2 under Treas. Reg. §1.401(a)(9)-3, Q-5, A-5. Otherwise, the postdeath distribution rules are essentially unified regardless of whether death occurred before or after the required beginning date. It should be noted that the terms of the plan or the IRA custodial agreement may elect or require the Five Year Rule in the case of the account holder dying before his or her required beginning date, although such language is becoming rare. Moreover, sometimes the plan language permits the beneficiary of an account holder who dies before his or her required beginning date to elect the Five Year Rule in accordance with the terms of the plan or IRA document.

In private letter ruling 200811028, an IRA owner died before his required beginning date with a child as his designated beneficiary. The IRA stated that, if the account holder died before his required beginning date, RMDs will be computed over the designated beneficiary's life expectancy with the first such distribution to occur by December 31 of the calendar year following the calendar year of the account holder's death all in accordance with the regulations. The IRA document went on to say that the beneficiary may elect distributions in accordance with the five-year rule wherein the entire IRA must be distributed by the end of the fifth calendar year following the calendar year of death. In this case, the beneficiary missed the RMD for the first two calendar years after the calendar year of the account holder's death. However, when the beneficiary realized the mistake, makeup RMDs were immediately taken and the 4974(a) 50% penalty paid. The issue was whether the beneficiary may compute RMDs over the beneficiary's life expectancy or whether failure to take RMDs in the first couple of years when they were required constituted an election of the five-year rule.

> The IRS focused on the language of the IRA. The default rule under the IRA was the life expectancy rule with the five-year rule being elective. The IRS concluded that the beneficiary had done nothing to affirmatively elect the five-year rule and therefore permitted the life expectancy RMD calculation.

The regulations impose a key date of September 30 of the calendar year following the calendar year of death. If a beneficiary receives payment of his or her portion of the account before the September 30 date, the beneficiary will be disregarded. Treas. Reg. §1.401(a)(9)-4, Q-4, A-4(a). If the beneficiary named as of the account holder's death disclaims in favor of a successor beneficiary, the successor beneficiary's life expectancy will control. *Id.* Interestingly, the regulations specify that if a named beneficiary dies between the account holder's death and the September 30 date, the successors to the deceased beneficiary will use the deceased beneficiary's life expectancy to determine minimum distributions. Treas. Reg. §1.401(a)(9)-4, Q-4, A-4(c). It does not make sense that a child could disclaim in favor of a grandchild whose significantly longer life expectancy would then be used, whereas if the child were to die before the September 30 date, the grandchild would be stuck with the child's life expectancy. Of course, one might consider having the estate of the deceased child disclaim on behalf of the child. The regulations, however, require disclaimer by the named beneficiary before death. *Id.*

The regulations make clear that one cannot go beyond the beneficiary designation in the applicable document (i.e., plan or IRA document) to determine the beneficiary. *Id.* Thus, an individual who is entitled to a portion of the account under a will "*or otherwise under applicable state law*" is not a designated beneficiary. For example, if the designated beneficiary (either by terms of the beneficiary designation or the applicable plan or IRA document) is the estate of the account holder, an individual entitled to all or a portion of the estate by reason of a will or intestacy laws will not be considered the beneficiary for purposes of calculating minimum distributions. Rather, the estate will be considered the beneficiary. As described below, this may have serious ramifications.

If an account holder dies before his/her required beginning date, the first distribution calendar year is the year in which the initial distribution is required to be made to the designated beneficiary (December 31 of the calendar year following the calendar year of death, unless the surviving spouse is the sole beneficiary, in which case distribution may be deferred until December 31 of the calendar year in which the participant would have attained age 70 1/2). Treas. Reg. §1.401(a)(9)-5, Q-5, A-5(a).

With the above rules in mind, let's examine the applicable distribution period for certain beneficiaries.

(d) Spouse

If the spouse is the designated beneficiary, that spouse may always roll over his or her interest in the plan or account into an IRA in his or her name, in which case the minimum distribution rules apply to the spouse as the account holder. If a spouse will *not* complete a rollover, there are several different rules that may applicable.

If the account holder passed away before his or her required beginning date and the spouse is the sole beneficiary of the account, the spouse may defer commencement of distribution until the end of the calendar year in which the participant would have reached 70 1/2. Treas. Reg. §1.401(a)(9)-3, Q-3, A-3(b). This rule only applies when the spouse is the sole beneficiary of the account. However, if under Treas. Reg. §1.401(a)(9)-8, Q-2, A-2 the spouse is one of several beneficiaries and his or her interest in the account is segregated during the calendar year following the year of the participant's death, the spouse will be deemed as sole beneficiary of a separate account and this special deferral rule should apply.

Under Treas. Reg. §1.401(a)(9)-4, Q-4, A-4(b), if the account holder dies before his or her required beginning date, and the spouse does not rollover to an account of his or her own and the spouse dies before the end of the year the account holder would have attained age 70 1/2, then the beneficiaries of ***the spouse*** will be treated as beneficiaries for RMD purposes. This is an unusual rule but does have a practical application in at least one setting. Assume the surviving spouse is under 59 1/2 and does not wish to complete a rollover so that he or she may take distributions from the decedent's account free from the 10% penalty of IRC §72(t). In this case, should the young surviving spouse die before the end of the calendar year the deceased account holder would have been age 70 1/2, the spouse's beneficiaries will be treated as beneficiaries for RMD purposes.

If the account holder dies after the required beginning date with the spouse as the sole beneficiary of the account, and the spouse does not complete a rollover, the applicable period for the distribution will be the spouse's life expectancy, recalculated annually; but, after the spouse's death, that life expectancy will revert to the remaining unrecalculated life expectancy of the spouse. Treas. Reg. §1.401(a)(9)-5, Q-5, A-5(c)(2). If the spouse is one of several beneficiaries of the IRA, this special treatment will only apply if the separate account rule of Treas. Reg. §1.401(a)(9)-8, Q-2, A-2 applies.

To the extent the surviving spouse is the beneficiary of the working spouse's account, he or she may roll over all or any portion of the death distribution to an IRA in his or her name. I.R.C. §408(d)(3)(C). If the surviving spouse is the sole beneficiary of the participant's IRA and has the unlimited right to withdraw amounts from that IRA, the spouse may elect to treat the IRA as his or her own for minimum distribution purposes. This election may be made at any time after the minimum distribution (if the participant was beyond his or her required beginning date) for the calendar year of death has been made. Treas. Reg. §1.408-8, Q-5, A-5. The election may be made by the surviving spouse redesignating the account into his or her name, by missing a minimum distribution applicable to a surviving spouse beneficiary under the regulations, or by making contributions to the account. It is interesting to note that the above cited regulations pertaining to the election will not apply when a trust is the beneficiary of the IRA, even if the surviving spouse is the sole beneficiary of the trust. A series of Private Letter Rulings, issued prior to the regulations, permitted allocation of an IRA from a trust or estate to the surviving spouse to facilitate a rollover because, in those rulings, the spouse had the unilateral right to withdraw the IRA from the trust or estate. Recently issued Letter Rulings confirm the rollover through an estate or trust in certain circumstances. *See* discussion later in my outline. Further, the rollover may occur even though prior installments may have been paid to the working spouse during his or her lifetime.

Moreover, in Private Letter Ruling 95-24-020 (Mar. 21, 1995), a surviving spouse in a non-community property state exercised her right to a "forced share" of the estate and thereafter exercised her power to choose assets included in the forced share in order to allocate the retirement benefit to herself. The ruling allowed her to roll over the account to an IRA in her name.

Private Letter Ruling 200634065 contained a statement by the IRS broadly interpreting the ability of the surviving spouse to complete a rollover through a trust or an estate. In this case, the decedent's IRA was payable to his estate. The decedent's wife was the sole beneficiary and personal representative of the estate. The wife's plan was to have the custodian distribute the IRA to the estate and from the estate to the spouse and, finally, from the spouse to a rollover IRA within 60 days of the initial distribution. The IRS noted the distinction between an inherited IRA (not eligible for a rollover) and the exception to the inherited IRA for payment to a surviving spouse under IRC §408(d)(3)(C)(ii). The IRS then dealt with the statement in the final §401(a)(9) regulations pertaining to the surviving spouse's ability to elect to treat the decedent's IRA as his or her own. The IRS noted that this type of election is only available if the surviving spouse is the sole beneficiary of the IRA with an unlimited right to make a withdrawal. In addition, the IRS noted the statement in the regulations that the surviving spouse will not be able to elect to treat the decedent's IRA as his or her own if the beneficiary of the IRA is a trust (even if the surviving spouse is the sole beneficiary of the trust). The IRS went on to differentiate this language from the situation where the surviving spouse actually receives the distributed IRA funds through an estate or trust and concluded as follows:

> [A] surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets ***pass through either a trust and/or an estate***. (Emphasis added.)

In LR 200915063, an IRA was payable to a revocable living trust where the decedent died prior to his required beginning date. The surviving spouse was the sole trustee of the living trust. The IRA custodian advised the surviving spouse to pay the IRA to a ***taxable*** trust account. Less than sixty days later, the surviving spouse, in her capacity as trustee, requested that the custodian reverse the distribution back to the decedent's IRA. The custodian declined. In this private letter ruling, the IRS permitted (i) allocation of the IRA distribution to the revocable portion of the revocable living trust, (ii) extension of the rollover period under IRC §408(d)(3); and (iii) rollover by the surviving spouse into an IRA in her name.

See the discussion of additional private letter rulings in this area at Section 1.3(2), below.

(e) Nonspouse individual beneficiary

If the employee dies after the required beginning date and an individual who is not the account holder's spouse is the designated beneficiary, the maximum distribution period will be the designated beneficiary's life expectancy (determined with reference to the beneficiary's birthday in the calendar year following the calendar year of the account holder's

death) and using the tables under Treas. Reg. §1.401(a)(9)-9, Q-1, A-1. The applicable distribution period will be reduced by one for each calendar year elapsing after the calendar year following the account holder's death. Treas. Reg. §1.401(a)(9)-5, Q-5, A-5(c).

For example, assume the surviving spouse passes away naming the couple's only child as beneficiary and that the child's attained age in the year following the surviving spouse's death is 45. Under the single life table of Treas. Reg. 1.401(a)(9)-9, Q-1, A1, the divisor will start at 38.8 to be reduced by one year for each calendar year elapsing after the calendar year following the surviving spouse's death. This is known as a "stretch-out" IRA because the minimum distributions are so small.

(f) Non-individual (or no) designated beneficiary

Under the regulations, only individuals and certain trusts may be designated beneficiaries for the purposes of creating a distribution period. Treas. Reg. §1.401(a)(9)-4, Q-3, A-3. This rule can cause problems when the participant's estate is the beneficiary. If the participant died before his or her required beginning date, the estate as beneficiary will trigger application of the five-year rule, under which distribution must be complete by the calendar year containing the fifth anniversary of the participant's death. (Note: The 2009 calendar year does not count due to the RMD Holiday of §408(a)(g)(H). This could extend the five year period another year.) Treas. Reg. §1.401(a)(9)-3A(b), Q-2, A-2. If, by contrast, the participant died after the required beginning date and the estate was the designated beneficiary, distribution may be made over the remaining life expectancy of the account holder without recalculation. Treas. Reg. §1.401(a)(9)-5, Q-5, A-5(c)(3). The above rules would also apply when a charity or a trust that is not a "qualified trust" is designated beneficiary.

In Private Letter Ruling 2003-43-030 (July 31, 2003), the decedent (who died after his required beginning date) died without designating a beneficiary of his IRA. Under the IRA custodial account agreement, the decedent's estate was the beneficiary. The decedent's three children were equal residual beneficiaries of the estate. A daughter asked the I.R.S. to approve the segregation of her one-third share of the IRA and a subsequent IRA-to-IRA transfer to a new IRA custodian. The I.R.S. permitted the segregation and the IRA-to-IRA transfer; provided, however, that this process did not result in a "stretch-out". Rather, the daughter was required to take minimum distributions over the decedent father's remaining life expectancy. The same result was reached in Private Letter Ruling 201128036.

See the discussion of LR200846028 under the "Reformation" heading under Trusts as beneficiaries, below.

(g) Multiple beneficiaries

If, on the last day of the calendar year following the participant's death, there are several beneficiaries of the account and the account has not been separated as described below, the beneficiary (as of September 30th of that year) with the shortest (or no) life expectancy will be used to determine minimum distributions. Thus, if several children were beneficiaries of the account, then, absent the separate account treatment, the life expectancy of the oldest child, unrecalculated, would be used to determine distributions from the account. If a charity or estate

were one of several beneficiaries, absent corrective action (i.e., division into separate accounts before the end of the calendar year following the calendar year of death), the account holder could be deemed to have died without a designated beneficiary. Treas. Reg. §1.401(a)(9)-5, Q-7, A-7.

As mentioned above, the rules that focus on the beneficiary with the shortest (or no) life expectancy may be significantly mitigated in most events through timely compliance with the separate account rule of Treas. Reg. §1.401(a)(9)-8, Q-2, A-2.

(h) Separate accounts/quasi-separate accounts

The regulations permit a single account to be divided into separate accounts, each having different minimum distribution rules, as long as separate accounting, including allocating investment gains and losses, is established. Treas. Reg. §1.401(a)(9)-8, Q-2, A-2(a). If there are separate IRAs (or separate accounts as per the regulations), different minimum distribution rules may apply with respect to each such account. The segregation must occur no later than the end of the calendar year following the calendar year of death. *Id.*

Practice Tip: If after the participant's required beginning date a spouse (or trust for a spouse) who is more than ten years younger than the participant and other beneficiaries will be named, the separate account for that beneficiary should be established prior to the calendar year for which separate account treatment is sought.

The importance of separate IRAs (or accounts) cannot be overstated. From a minimum distribution standpoint, each individual beneficiary will, after the participant's death, have a maximum deferral period equal to his or her own unrecalculated life expectancy. Moreover, each beneficiary will have the right to use that deferral or take earlier distributions as each he or she chooses. Each beneficiary will have the right to make his or her own investments. Finally, each beneficiary could select his or her own custodian of the decedent's IRA, through an IRA-to-IRA transfer. *See* Priv. Ltr. Rul. 2000-08-044 (Dec. 3, 1999). Note: The IRA account is still "owned" by the decedent, for the benefit of the beneficiary; only a spouse as beneficiary can transfer the decedent's IRA to the spouse's own IRA.

The regulations make clear that the separate account treatment is not available to beneficiaries of a trust. Treas. Reg. §1.401(a)(9)-4, Q-5, A-5(c). Thus, if a qualified trust is a beneficiary and that trust divides into equal shares for the deceased account holder's children, the life expectancy of the oldest child will determine minimum distributions, even if the IRA is segregated into separate IRAs for each separate trust fund. The planner could likely avoid this rule by including, in the IRA beneficiary designation itself, a direction to divide the IRA into separate and equal IRAs for each trust fund.

In Private Letter Rulings 2003-17-041 through 2003-17-044 (Dec. 19, 2002), the I.R.S. took a very harsh approach with regard to separate share treatment for separate trust funds. In those rulings, one trust was designated as beneficiary of the IRA. However, both the beneficiary designation language and the trust language allowed for division into separate trusts for each of the decedent's three children. Essentially, the I.R.S. stated in the ruling that because the separate trusts and shares were not automatically established at death, separate share

treatment was not available and each trust's maximum distribution period would be measured with respect to the oldest child. The IRS followed this approach in LRS 200634068, 200634069 and 200634070. The only way to avoid the result of this ruling would be to direct the trustee (in the trust document) to establish the three separate trusts effective at death *and* , in the beneficiary designation, set forth a required division of the IRA into separate IRAs for each of the trusts. In other words, all fiduciary discretion should be taken out of the equation. Even if this occurs, it is not clear from these rulings that separate share treatment would apply. The I.R.S. might still argue that because the separate trusts were not technically in existence at death, separate share treatment is not available.

It should be noted that an IRA beneficiary designation giving multiple beneficiaries fractional interests in the account may take advantage of the separate account rules, as most states require fractional gifts to receive a pro rata share of income, appreciation, depreciation and the like. However, the practitioner should take care using pecuniary formulas in an IRA beneficiary designation. If the practitioner wishes to set up separate account treatment, the language of the IRA beneficiary designation must state that the pecuniary gift will receive its share of appreciation, depreciation, income, and the like.

There is now a concept that practitioners are referring to as the "quasi-separate account." This situation usually occurs when an estate or trust has been designated as beneficiary and the fiduciary later directs the IRA custodian to divide the IRA into separate accounts, each payable to a separate beneficiary or trust fund. If dealing with a trust in which both the trust document and beneficiary designation require division of the IRA into separate IRAs (one payable to each separate trust fund), true separate account status will be achieved, because, assuming each separate trust adequately deals with the qualified trust rules and contingent beneficiary issue, the beneficiary of each trust will be used for minimum distribution purposes. If, however, the segregation into separate IRAs is at the direction of the trustee (without a requirement in the beneficiary designation itself), then true separate account status is not achieved. In such a case, the oldest trust beneficiary's life expectancy will control minimum distribution calculations for all of the trusts after segregation. Priv. Ltr. Ruls. 2003-17-041 through 2003-17-044 (Dec. 19, 2002), 2004-10-020 (Dec. 9, 2003), & 2004-44-033 (Aug. 3, 2004) (trustee directed segregation of an IRA into separate IRAs; one for each individual beneficiary of the trust.). When the estate is designated as beneficiary and the personal representative directs division of the IRA into separate shares for each of the estate's beneficiaries, the I.R.S. will approve the division, but true separate share status is not achieved. Rather, minimum distributions will be calculated with reference to the decedent's remaining life expectancy (if the decedent died after his required beginning date) or under the five-year rule.

(i) Trusts as beneficiary (multiple beneficiaries and the "conduit trust")

The practitioner should be aware that successfully using a trust as a beneficiary of a retirement plan or IRA is a tricky proposition. The qualified trust rules described above must be complied with and the practitioner must take care to avoid any problems with multiple beneficiaries as described above. Moreover, there is a true economic concern. A spousal trust (i.e., credit shelter or QTIP trust) should be compared with naming the surviving spouse as outright beneficiary. When the surviving spouse is outright beneficiary, both the participant and, after rollover, the participant's spouse will each independently be able to use the liberal Uniform

Lifetime Table. After both husband and wife have died, assuming separate accounts, each child will have his or her own unrecalculated life expectancy for distributions. This method provides a very long "stretch-out." In contrast, when a trust is the designated beneficiary, the participant will be able to use the Uniform Lifetime Table while living, but after his or her death, the life expectancy of the spouse will be all that is available.

There are other income tax concerns as well. If the trust is a "simple trust" under income tax rules (i.e., the trust is required to distribute all of its income at least annually), the interplay between the minimum distribution rules and the required income distribution is important. The trust will only be required to distribute fiduciary accounting income. If the minimum distribution is greater than the fiduciary accounting income, the trust must treat the entire minimum as income in respect of a decedent, hence distributable net income. However, if the trust only distributes the fiduciary accounting income portion of the minimum distribution, it may only deduct that distribution and the balance of the minimum distribution will be taxed at the trust's rates.

Qualified Trust Rules. Under the RMD rules, there are two key issues the planner must contend with; (i) the "qualified trust rules" and (ii) properly drafting the trust so as to segregate a trust beneficiary whose life expectancy will be used determine RMDs to the trust. If a trust is the beneficiary, the underlying beneficiaries of the trust may be considered designated beneficiaries if the qualified trust rules of Treas. Reg. §1.401(a)(9)-4, Q-5, A-5(b), and A-6 are met on a timely basis. To be timely, compliance must occur as follows:

- Assuming distributions will be made with reference to the Uniform Lifetime Table during the participant's lifetime, the qualified trust rules do not need to be complied with until *October 31* of the calendar year following the calendar year of the participant's death. Treas. Reg. §1.401(a)(9)-(4), Q-6, A-6(b).

- If the participant's spouse is more than ten years younger than the participant, and the participant wishes to name a trust as beneficiary yet look through the trust to treat the spouse as beneficiary in order to use the actual joint life expectancy of the participant and the spouse, the qualified trust rules must be met, presumably before the due date of any minimum distribution to be so calculated. Treas. Reg. §1.401(a)(9)-4, Q-6, A-6(b).

The qualified trust requirements are fairly straightforward:

- The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

- The trust is irrevocable or will, by its terms, become irrevocable upon the death of the participant.

- The beneficiaries of the trust who could be treated as designated beneficiaries under the rules discussed below, are identifiable from the trust instrument.

- The documentation required by Treas. Reg. §1.401(a)(9)-4, Q-6, A-6(a) or (b) has been provided to the plan administrator (or IRA custodian) on a timely basis.

To meet the documentation requirement, the account holder (or after death, the trustee) must provide a copy of the trust instrument and agree to provide any trust amendment within a reasonable time in the future. In the alternative, the following may be provided: (i) a list of the beneficiaries (including remainder beneficiaries and the conditions of their entitlement), (ii) a certification that the list is complete and correct, (iii) an agreement that, if the trust is amended, corrected information will be provided, and (iv) an agreement to provide a copy of the trust instrument upon demand.

The problem is this: if an individual has a general power of appointment over the portion of the trust estate containing retirement assets, it could be argued that the trust lacks identifiable beneficiaries and so the trust would not qualify. For example, a general power of appointment may be exercised in favor of an estate or a charity (neither of which has a life expectancy for I.R.C. §401(a)(9) purposes). A special power of appointment would likely not cause a problem provided that, at the time of death, the individual within the class with the shortest life expectancy is identifiable. Would the mere fact that a much older individual could be adopted into the class create a problem? Of course, these issues may be avoided by including a limitation that the power holder may only exercise the power in favor of individuals younger than the power holder.

In Private Letter Rulings 2002-35-038 through 2002-35-041 (June 4, 2002), separate trusts were set up for each child of the decedent. Each child had a testamentary general power of appointment over the balance of his or her trust remaining at death. However, the trust did not permit the child to appoint to a non-individual beneficiary or an individual who would have a shorter life expectancy than the decedent's oldest child. This arrangement satisfied the qualified trust rules. According to one commentator, the exclusion was added after the death of the account holder by way of court reformation. *Commentary No. 136, PLRs 200235838 through 200235041 – Minimum Distribution and Trusts,* STEVE LEIMBERG'S EMPLOYEE BENEFIT AND RETIREMENT PLANNING NEWSLETTER (Leimberg Info. Serv.), Sept, 23, 2002 (hereinafter Commentary 136). Compare this Private Letter Ruling 201021038 (described below) wherein the IRS refused to give effect to a trust reformation for RMD purposes.

Which Trust Beneficiary is the RMD Beneficiary? Satisfying the qualified trust rules is really a threshold requirement. Once these rules are satisfied one “looks through” the trust to its underlying beneficiaries in order to apply the RMD rules. Recall that the rules applicable to multiple beneficiaries state that the beneficiary with the shortest (or no life expectancy) will control to determine RMDs to all multiple beneficiaries (unless separate accounts are established). Therefore, in the context of a trust as beneficiary, look through treatment causes the beneficiaries of the trust to be multiple beneficiaries. Therefore, a key question is which trust beneficiaries (i.e., current and remainder) will be considered in the group or “basket” of multiple beneficiaries for this test. Sadly, the regulations are not clear on this point:

A person will not be considered a beneficiary for purposes of determining who is the beneficiary with the shortest life expectancy . . . or whether a person who is not an individual is a beneficiary merely because the person could become the successor to the interest of one of the employee's beneficiaries after that beneficiary's death. *However, the preceding sentence does not apply to a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor to the interest of one of the employee's beneficiaries upon the beneficiary's death.* (Emphasis added.)

Treas. Reg. §1.401(a)(9)-5, Q-7, A-7(c)(1).

As a result, the regulations create a key issue: Which of the current and remainder beneficiaries will be the multiple beneficiaries so as to pluck out the beneficiary with the shortest or no life expectancy to be used to determine RMDs to the trust?

Conduit Trust Safe Harbor. The key safe harbor approach is commonly known as the "conduit trust" although that term is not used anywhere in IRC §401(a)(9) or the regulations. Rather, the conduit trust appears as an example under Reg. 1.401(a)(9)-5, QA7(c)(3) (Ex.2). This example tells us that a trust beneficiary will be treated as the sole beneficiary for RMD purposes (hence, his or her life expectancy will be used to determine RMDs to the trust) if during the lifetime of said beneficiary, any and all distributions or withdrawals from the account are required, by the terms of the trust, to be distributed to said beneficiary. In other words, the trustee does not have the opportunity to accumulate any amounts withdrawn or distributed from the IRA. Here are some tips concerning this valuable safe harbor:

- The conduit trust permits the trustee to leave the IRA intact, investing and reinvesting its assets. The RMDs from the IRA will be determined with reference to the conduit beneficiary's life expectancy as though the conduit beneficiary were the sole individual beneficiary of the account. In other words, the only required distributions from the account to the conduit beneficiary will be each year's RMD. Amounts in excess of the RMD may be withdrawn by the trustee and distributed to the conduit beneficiary in accordance with the terms of the trust (e.g., for health, maintenance, education, support).

- Conduits trusts are an excellent choice with regard to trusts for minor children. Although there is no authority on point, there is absolutely no reason why distributions made by the trustee to a guardian of a minor child would not be treated as made to that child for conduit trust purposes.

- The conduit trust may also be used for a "pot trust" for minor children wherein the trustee has the discretion to sprinkle distributions among the decedent's minor children. So long as the trust requires the trustee to distribute any and all withdrawals from the IRA or retirement plan to any one or more of the children, the life expectancy of the oldest child should govern for RMD purposes.

- Although not expressly stated in the regulations, use of IRA funds to pay trustee expenses should not disqualify the trust as a conduit trust. In LR 200620026, a

trust was deemed to be a conduit trust even though IRA funds were used to pay asset management fees of the trustee.

- Of course, a conduit trust is not a good option for a "special needs trust" for a disabled beneficiary. This is because the required distributions would likely disqualify the disabled beneficiary from needs based assistance.

- The conduit trust approach is not a good option for a Q-Tip or credit shelter trust for a surviving spouse. In a Q-Tip trust, if the surviving spouse lives long enough, the RMDs will grow and the surviving spouse will receive outright distributions of an increasing larger portion of the IRA, hence defeating the purpose of the Q-Tip trust in the first place. In the case of a credit shelter trust, as the surviving spouse ages and RMDs grow, assets will shift to the surviving spouse, hence increasing his or her gross estate.

- The identity of the remainder beneficiaries is irrelevant to a conduit trust. Therefore, the conduit trust beneficiary may be given an unlimited general power of appointment over trust assets exercisable by Will. Or, remainder beneficiaries could include charities or charitable trusts.

<u>Immediate Outright Remainder Safe Harbor (Sort Of)</u>. In Treas. Reg. 1.401(a)(9)-5, Q-7, A-7(c)(3) (Ex. 1) the trust in question allowed principal to be distributed to a surviving spouse based on a standard set forth in the trust instrument. Upon the surviving spouse's death, the trust would terminate and be distributed to the children of the account holder. The regulation concludes that the beneficiaries of such trust for RMD purposes will be the surviving spouse and the children. In other words, the regulation did not speculate as to who would be default beneficiaries in the event none of the children survived the account holder's spouse. Instead, the regulation focused on who would take the trust assets outright immediately following the death of the surviving spouse. This approach was also taken by the IRS in Rev. Rul. 2006-26, discussed below. In addition, the Service has taken this position in private letter rulings such as LR 200610027 and 200843042, discussed below.

This approach is a form of "accumulation trust" for RMD purposes as the trustee can accumulate or distribute the IRA with distribution according to the standards in the trust.

This immediate outright remainder approach can be simple or complicated. For example, a trust that provides for the account holder's sister for life and remainder outright to the account holder's children would result in those of the account holder's sister and children living on the account holder's death being treated as beneficiaries for RMD purposes. Presumably, the sister would be the oldest as among them. Therefor, her life expectancy would be used to determine RMDs to the trust.

Here is another example: Discretionary trust for the account holder's child until he reaches 45 years of age at which time the trust will be terminated; provided, that if the child dies before reaching age 45, the trust will be distributed outright to the heirs at law of the child. Assume that, on the date of the account holder's death, the child survives the account holder and that, should the child die immediately following the account holder, the child's uncle would be

his oldest "heir at law". In this case, the life expectancy of the uncle would be used to determine RMDs to the trust.

The immediate outright remainder approach is likely the best alternative for a special needs trust for a disabled beneficiary. As described above, a conduit trust is not a viable alternative in this case. However, you could design the trust so that, following the account holder's death, special needs distributions only are permitted to the disabled child and, upon his or her death, the trust assets are distributed immediately and outright to the disabled child's siblings. In this case, the child and his or her siblings living on the date of the account holder's death will be the RMD beneficiaries of the trust. The life expectancy of the oldest of such group will be used to determine RMDs to the trust.

The immediate outright remainder approach must be used with caution because there is always the possibility that one or more of the remainder beneficiaries may predecease the account holder thereby changing the analysis of who is the oldest beneficiary. This issue may be addressed through "fire wall language" described below.

Finally, and as mentioned above, the immediate remainder approach allows the trust to accumulate distributions from the IRA, so it really is a form of what is often referred to as a "accumulation trust". Thus, the planner should include proper firewall language described below.

There are a couple of interesting private letter rulings dealing with the immediate outright remainder approach:

- In LR 200610027 an IRA was payable to a trust for the benefit of a minor grandchild. Discretionary distributions were permitted until the grandchild reached age 25 at which time the trust would terminate and be distributed to the grandchild. If the grandchild died before reaching 25, the assets would pass to the grandchild's heirs at law. At the time of the account holder's death, the oldest of the grandchild's heirs at law who would be entitled to the trust in the event the grandchild died before reaching age 25 was the grandchild's father. Therefore, the Service concluded that the father's life expectancy would be used to determine RMDs to the trust. Of course, this result could have been avoided through a conduit trust.

- In LR 200843042 the decedent's son was the beneficiary of a trust that would continue until the son reached age 40. If the son were to die before reaching age 40, the trust was to be distributed to the son's children; or if none, his heirs at law. At the time of the account holder's death, the son had no children. Moreover, the oldest heir at law of the son's was his mother and so her life expectancy was used to determine RMDs to the trust. Once again, this result could have been avoided through the use of a conduit trust.

<u>Accumulation Trust</u>. If the trust is not a "conduit trust" then, for the RMD analysis, the trust is an "accumulation trust" as the trustee has the power to accumulate all or a portion of distributions taken from the retirement plan or IRA. As described above, the

immediate outright remainder approach may, if properly structured, sufficiently zero in on the trust beneficiary to be used for RMD purposes. However, the drafter should give consideration to "firewall language" in any accumulation trust that, for example, (i) precludes the exercise of powers of appointment relative to a retirement plan or IRA assets (or limits the appointees to individuals no older than the other beneficiaries of the trust), (ii) prevents an adopted individual from becoming a trust beneficiary relative to IRA or retirement plan assets when that adopted individual might be older than the stated beneficiaries of the trust, and (iii) precludes the use of IRA or retirement plan assets for the payment of estate and other expenses.

A tough question with accumulation trusts is whether the trustee may have the ability to use IRA or retirement plan assets to pay the deceased account holder's debts, expenses and estate taxes (or similar expenses of the trust beneficiary). Of course, the fear is that such power will cause the "estate" to be within the group or basket of beneficiaries; and, because the estate has no life expectancy, the Five Year Rule would apply if the account holder died before his required beginning date (or distribution would be made over the balance of the account holder's unrecalculated life expectancy if the account holder died after his required beginning date). If one is drafting an accumulation trust, this should be easy enough to plan for assuming the accumulation trust will have other assets to pay these types of expenses. The planner can simply state that the IRA/retirement plan assets will not participate in payment of these expenses. What happens if this issue was not addressed in the planning stage (i.e., crops up after death):

- As an initial matter, the IRS has never formally (or informally through a private letter ruling), disqualified a trust based on its ability to pay these expenses of the decedent's estate.

- There are multiple private letter rulings which take the position that, so long as the IRA is protected from claims of creditors, the estate could not be considered a beneficiary of the trust because the trustee could not be forced by the personal representative to participate in payment of expenses. *See* LRs 200209057, 2004440031 and 200750019.

- In the estate administration process, the estate could be removed as a potential beneficiary simply by having its participation in these types of expenses completed or released by the September 30th date.

- PLRs 200432027, 029 and 031 did not disqualify a trust simply because the retirement benefits remained subject to payment of estate taxes after the September 30th date.

Allocation to Subtrusts. What if the beneficiary of the account is a trust which, pursuant to the terms of said trust is to be divided among subtrusts? Reg. 1.401(a)(9)-4QA5(d) tells us that the qualified trust requirements as well as the basket of beneficiaries issue must be analyzed with respect to each subtrust to which benefits may be allocated. What if the trust contains language stating that it is the decedent's intent that, to the extent possible, retirement benefits be allocated to one particular subtrust over another? (LR 199903050 still required all possible recipient trusts to be analyzed whereas LR 200620026 required only the favored trust to be so analyzed.)

As described above, Reg. 1.401(a)(9)-4QA5(c) makes clear that separate account treatment is not available for beneficiaries of a trust. This is an important rule for the planner to pay attention to:

- If the account is payable to a living trust and a living trust is ultimately distributed outright to the decedent's children, the analysis is as follows: First, the trust will need to be a qualified trust. Second, the basket of beneficiaries will be the decedent's children (assuming no other beneficiaries of the revocable trust). Thus, at the conclusion of trust administration, the trustee can direct the IRA custodian to create separate inherited IRAs from the decedent's IRA; one for each of the decedent's children. However, RMDs for each of these inherited IRAs will be determined with reference to the life expectancy of the oldest child. (*See* LRs 200634068, 200750019).

  Of course, this result could be avoided by naming the decedent's children as outright beneficiaries of the IRA, in which case, they could divide the IRA after death to obtain separate account treatment under which each of their respective life expectancies would be used for their respective inherited IRAs.

- What if the revocable living trust breaks into separate trusts for the decedent's children following the decedent's death? As described above, if the revocable living trust is the designated beneficiary, both the revocable living trust and each child's subtrust must be analyzed under the above trust rules for RMD purposes. However, because the revocable living trust itself is named, even if the children are deemed to be the sole beneficiaries, true separate account treatment will not be obtained. The trustee will be able to cause creation of separate inherited IRAs; one for each subtrust. However, RMDs with respect to each said IRA will be determined with reference to the life expectancy of the oldest child of the decedent.

  The way to create pure separate account treatment under the above scenario would be more specificity in the beneficiary designation. If the beneficiary designation requires the account be divided into separate accounts in accordance with the separate account rules; one for each of the trusts under the revocable living trust, then RMDs from each inherited IRA will be calculated with reference to the life expectancy of the child beneficiary of the trust to which it is payable (assuming, with respect to each said trust, the child is the RMD beneficiary under the rules described in this outline, above).

- Remember, an estate is a bad beneficiary. For example, if the decedent names an estate as beneficiary and the Will provides that the estate is to be divided into separate trusts for the decedent's children, the results would be as follows: The personal representative of the estate could cause the custodian to divide the IRA into separate inherited IRAs; one for each trust. However, RMDs for each trust will be calculated as though the estate is the beneficiary (Five Year Rule if the account holder died before his or her required beginning date; remaining unrecalculated life expectancy of the account holder if the account holder died after such date).

  A better result could be obtained as follows: The beneficiary designation would require that the IRA be divided into separate accounts; each payable to the trust established for

the child under the decedent's Will. Assuming each said trust complies with all the trust rules described above, and that the accounts are divided as required for separate account treatment, RMDs from each separate inherited IRA will be calculated with reference to the child beneficiary of the trust.

- What if the decedent wants there to be multiple trusts for each child (e.g., GSTT exempt/ GSTT non-exempt)? Here is how to plan for this scenario: The Will or revocable living trust could pass the trust balance (or estate residue) to a single trust which will be divided between the GSTT exempt and GSTT non-exempt portion. Thereafter, each child will have a GSTT exempt and non-exempt trust. If this overall trust is named as beneficiary, and the trust rules described above are complied with for the overall and each underlying trust, the oldest child of the decedent will be treated as the RMD beneficiary for each and every GSTT exempt and non-exempt trust so created. Although this may not be the optimal result for RMD purposes, it does provide significant flexibility by adding the retirement benefits to the "pot" for division between a GSTT exempt and non-exempt share.

- **Reformation.**

Three Private Letter Rulings (LRs 200616039, 200616040 and 200616041) involved a fact pattern under which the husband had an IRA of which he had designated his wife as primary beneficiary and his daughters as contingent beneficiaries. The husband rolled the IRA to a new custodian and directed the custodian to complete the beneficiary designations as with the previous IRA.

The husband died after his required beginning date and the wife died soon afterward. Shortly thereafter, the wife's estate disclaimed the wife's interest as primary beneficiary of the husband's IRA.

Because the second IRA custodian had not followed the husband's instructions, his daughters were not named contingent beneficiaries. Therefore, after the disclaimer, the State Court reformed the beneficiary designation to include the daughters as contingent beneficiaries. The reformation was based, in part, on an affidavit from the second IRA custodian stating that the husband's instructions that the second IRA be set up exactly like the first IRA had not been followed.

Thereafter, the IRA custodian created two new f/b/o IRAs; one for each daughter.

The IRA approved (i) the disclaimer, (ii) the establishment of the two f/b/o IRAs by way of IRA-to-IRA transfer and (iii) each daughter's ability to compute RMDs over the life expectancy of the oldest daughter.

Of course, it is very beneficial that the IRS recognized the reformation of the beneficiary designation.

However, there are a couple of observations about these Letter Rulings:

- These rulings may be incorrect with regard to the use of the oldest daughter's life expectancy for RMD purposes. The LR cites the language in the §401(a)(9) regulations that states that a person's disclaimer between the date of death and the September 30th date, eliminates the disclaimant as an RMD beneficiary. What the reviewer may have missed, however, is additional language in the regulations that states that a person who dies after the account holder but before the September 30th date without disclaiming, continues to be treated as the beneficiary as of the September 30 date without regard to the identity of the successor beneficiary. Reg. 1.401(a)(9)-4Q-4A-4(c). In other words, the correct answer was that the separate accounts could be established, but RMDs would be required over the deceased wife's life expectancy.

- Another interesting point is as follows: Even if the IRS were correct with regard to its conclusion that the disclaimer by the wife's estate changed the beneficiaries to the daughters, it was incorrect in the conclusion that the life expectancy of the oldest daughter should be used. It appears that separate IRAs were created so that use of each daughter's life expectancies would have been permitted.

PLR 200707158 was a nasty situation. The account holder had two cousins (Cousin A and Cousin B). The account holder designated cousin A's three children as beneficiaries of an IRA. After the account holder's death, separate fbo or inherited IRAs were set up for each of Cousin A's children. Cousin B sued Cousin A and his children arguing undue influence. After conducting discovery and proceeding towards trial, a settlement was reached and court approved. A judgment reformed the IRA beneficiary designation effective the date before the account holder's death so that Cousin B would be the beneficiary of the IRA. In the private letter ruling, the IRS confirmed that (i) the settlement did not constitute a taxable gift by Cousin A's children to Cousin B, (ii) the transfer of the three inherited IRAs of Cousin A's children to an inherited IRA for Cousin B pursuant to the settlement agreement, was not taxable and (iii) Cousin B would be taxed on distributions from his IRA in the future.

In PLR 200742026, the account holder maintained an IRA with a beneficiary designation naming his wife as primary beneficiary and daughter as secondary beneficiary. On a subsequent beneficiary designation, the account holder again named his wife as primary beneficiary but, in spite of a reminder from the IRA custodian, neglected to complete the secondary beneficiary. The account holder died before signing the new form. There were two other very bad facts: (i) the account holder's spouse predeceased him and (ii) the custodial account agreement provided that, absent a designated beneficiary, the estate became the beneficiary.

The account holder's daughter was the sole beneficiary of the account holder's estate. In the process of the probate, the account holder's daughter obtained a court order amending the IRA beneficiary designation to name the daughter as beneficiary of the IRA.

The IRS cited Reg. 1.401(a)(9)-4, QA-1 which states that:

> A designated beneficiary is an individual designated as a beneficiary under the terms of the IRA or by an affirmative election of the IRA owner. Moreover, the fact that an IRA owner's interest passes to a certain

> individual under a Will or under ***otherwise applicable state law***, does not make the individual a designated beneficiary . . .

The IRS concluded that, because there was no designated individual beneficiary under the above rules and the account holder died after the required beginning date, the RMDs will be computed with reference to the account holder's life expectancy. In other words, the court reformation was ignored.

- LR 200846028. The account holder of an IRA died before his required beginning date. The account holder's beneficiary designation stated that the beneficiary was: ***as stated in Wills***.

  The account holder's estate plan was designed around a revocable living trust. Thus, the account holder had a pour-over Will.

  Under the revocable living trust, specific bequests of real estate were made to certain beneficiaries and the balance of the trust was to be divided and distributed among eight individuals.

  The trustee pursued and received a state court order interpreting the beneficiary designation as a designation of the eight individual beneficiaries of the revocable living trust. In short, the court order had the effect of moving the beneficiaries of the revocable living trust into the IRA beneficiary designation as though they were direct beneficiaries under the IRA beneficiary designation.

  Of course, the stakes of this private letter ruling were high. If the state court order was recognized by the IRS, the eight beneficiaries could each have separate IRAs and take RMDs over the life expectancy of the oldest such beneficiary. If, on the other hand, the language of the beneficiary designation was interpreted to specify the estate as beneficiary, the entire IRA must be distributed within five years of the date of the decedent's death.

  The IRS relied heavily on Reg. 1.401(a)(9)-4QA1 which states as follows:

  > The fact that an account passes to individuals under a will or otherwise under applicable state law does not make that individual a designated beneficiary unless the individual is designated as a beneficiary under the plan.

  Relying on the above, the IRS said that the court order was meaningless for RMD purposes. Therefore, the estate would be treated as beneficiary and the five-year rule applies.

- PLR 201021038. Bad news for estate planners – IRS refuses to recognize trust reformation for RMD purposes. The key facts involved in this private letter ruling were as follows: Husband was the IRA account holder. Wife had predeceased husband. At wife's death, a bypass trust was created for husband with wife's assets. The bypass trust provided that, upon husband's death, the trust would be divided into two equal trusts; one

for each of the couple's children ("children's trusts"). The children's trusts were lifetime trusts under which the child/trustee could make distributions of income and principal based on MESH and an independent trustee could make distributions to the child's descendants. Each child had a lifetime and testamentary special power of appointment ("SPOA") under which permissible distributes included charities. The children's trusts were not structured as conduit trusts. Nor was there any appropriate "firewall language" necessary for accumulation trusts under the RMD rules.

However, there was an odd statement of intent under which the trustor clearly desired "stretch out" treatment under which RMDs from the IRA to the trusts would be computed over as long a period as permissible. The problem with this language, however, is that it was not specific as to whose life expectancy should be used nor was the trustee given any authority to amend the trust.

Husband died with the bypass trust named as beneficiary of the IRA. He died after his required beginning date. After the husband's death, the trustees filed for and obtained a retroactive court-ordered trust amendment which essentially did two things: First, the children's trusts were converted to "conduit trusts" under which IRA distributions to the trusts could not be accumulated. Rather, any distributions from the IRA would have to be distributed to the child/beneficiary. Second, "firewall" language was added so as to (i) remove charities from the appointees under the SPOAs, (ii) prohibit use of IRA funds to pay debts and administration expenses, etc., and (iii) prohibit distribution of IRA funds to descendants older than the oldest child.

It is interesting to note that had either approach been taken prior to death, such approach would have worked. In other words, the approach taken in the reformation was a bit of "belt and suspenders".

The IRS took a hard line. Citing case law authority for the proposition that a reformation of a trust is not effective to change the tax consequences of a completed transaction, the IRS refused to recognize the trust reformation. As a result, it concluded that, without the reformation:

- Amounts distributed from the IRA to the children's trusts could be accumulated; and,
- To these accumulations, charitable organizations are clearly authorized as possible beneficiaries.

As a result of the above, the IRS concluded that, for RMD purposes, there was no designated beneficiary which would mean that the RMDs to the trusts must be distributed over the period of the husband's remaining life expectancy. This all points to a troubling trend.

For a while, the IRS seemed relatively willing to allow post-mortem corrections to RMD situations. In PLRs 200616039 through 41, the IRS approved a reformation which actually designated a contingent beneficiary. More recently, however, the IRS refused to recognize a contingent beneficiary created by reformation. PLR 200742026. In PLR 200846028, the IRS

refused to recognize a reformation of somewhat ambiguous language in a beneficiary designation and, instead, treated the decedent's estate as beneficiary.

Previous private letter rulings have allowed trust reformations for RMD purposes. See Commentary Number 136, PLRs 200235038 through 200235041 – minimum distributions and trusts, Steve Leimberg's employee benefit and retirement planning newsletter, September 23, 2002. It now appears that, at least the rulings department is taking a harder line with regard to reformations. This position may be at odds with the September 30th "shake out" date concept. If a beneficiary can be eliminated for RMD purposes between death and the shake out date, why can't a trust reformation occur which effectively eliminates charities, decedent's estates and beneficiaries over a certain age?

In light of this private letter ruling, the best advice to practitioners is as follows:

- Take great care in drafting a trust that will be the beneficiary of an IRA or retirement plan account. You must make certain that you qualify the trust as a "qualified trust" under the regulations and incorporate either the conduit trust approach or appropriate firewall language. (This is really nothing new, but due to the IRS's antagonism towards post-death reformations, it is even more important.)

- If one of these scenarios lands in your lap post-death, you need to advise the client that the conservative approach would be that the situation cannot be fixed through a post-death reformation. However, bear in mind that a private letter ruling such as that discussed above is not necessarily the outcome if the matter were to be litigated. A more aggressive client might decide to reform the trust but not submit for a private letter ruling. If this is the case, you need to advise such client of the 50% penalty under IRC §4974 for failure to take the full RMD in any particular year.

- PLR 201008049. In this case, the designated IRA beneficiary lost the right to his benefits under a states slayer statute. Apparently, there was not a contingent beneficiary so the court ordered that, pursuant to the decedent's will, a "rightful beneficiary" was the taker.

  Even though the slayer statute treats the slayer as having predeceased the decedent, the decedent did not actually predecease for RMD purposes, the slayer's life expectancy will be used for RMD purposes. However, the 50% penalty for failure of the rightful beneficiary to take RMDs (as she did not control the IRA through the course of the estate's litigation) and the negligence penalty were waived as well.

(j) Beneficiary's right to name a beneficiary/transfer account

Assume that both husband and wife have died and a child is the beneficiary of a "stretch-out" IRA. As discussed above, minimum distributions will be computed with reference to the child's life expectancy. If the plan or IRA document so provides, the beneficiary may designate who will receive the undistributed account following the beneficiary's death. The recipient would be subject to the same minimum distribution rules as the deceased beneficiary. Treas. Reg. §1.401(a)(9)-5, Q-7, A-7(c)(2).

Moreover, even though the surviving spouse is the only beneficiary who may roll over an IRA (and therefore restart the minimum distribution rules), a nonspouse individual beneficiary may transfer the decedent's IRA from one custodian to another in a direct IRA-to-IRA transfer as long as the account remains in the decedent's name "f/b/o" the beneficiary, and the minimum distribution rules applicable to that account do not change. *See* Priv. Ltr. Rul. 2000-2408-044 (Dec. 3, 1999). As well, a formally unsegregated IRA may be segregated by the beneficiaries, and custodian-to-custodian transfers may thereafter occur with respect to the segregated IRAs. *Id.* The ability to transfer from one IRA custodian to another can be quite valuable. If one institution will not work efficiently with the family (i.e., permitting a beneficiary to designate a death beneficiary, etc.), the account may be moved in a trustee-to-trustee transfer. It is interesting that there is no code section permitting the trustee-to-trustee transfer, for this power comes solely from the regulations. Treas. Reg. 1.408-8, A-8. Again, the key to the trustee-to-trustee transfer is that the funds may not be distributed to the IRA beneficiary.

In Private Letter Ruling 2003-43-030 (July 31, 2003), the decedent (who died after his required beginning date) died without designating a beneficiary of his IRA. Under the IRA custodial account agreement, the decedent's estate was the beneficiary. The decedent's three children were equal residual beneficiaries of the estate. A daughter asked the I.R.S. to approve the segregation of her one-third share of the IRA and a subsequent IRA-to-IRA transfer to a new IRA custodian. The I.R.S. permitted the segregation and the IRA-to-IRA transfer, provided, however, that this process did not result in a "stretch-out." Rather, the daughter was required to take minimum distributions over the decedent father's remaining life expectancy.

In another ruling, a son was named as beneficiary of his deceased mother's IRA. Mistakenly, following his mother's death, the IRA was distributed to the son and a Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) was issued to the son. Immediately the son transferred the funds to an IRA at another financial institution in the name of the mother, deceased account holder for the benefit of the son. The I.R.S. ruled that even though the financial institutions involved later agreed to treat the entire transaction as an IRA-to-IRA transfer, the son would be taxed on the IRA. Priv. Ltr. Rul. 2002-28-023 (Apr. 15, 2002). This error stresses the importance of a nonspouse beneficiary never touching IRA funds when the IRA is moved from one institution to another.

In yet another ruling, a taxpayer instructed the administrators of his retirement plan to liquidate his account and directly transfer the proceeds to an IRA in the taxpayer's name. All of the paperwork necessary to complete this transaction was submitted to the Plan Administrator. Before liquidation of the assets and the transfer could occur, however, the taxpayer died. The taxpayer's nonspouse beneficiaries requested a ruling that would permit the direct rollover to occur because all the paperwork had been concluded before the taxpayer's death. The I.R.S. ruled that the rollover could not occur. In short, the Service concluded that for the rollover to be valid, all of the steps, including the actual transfer of assets, would have to have taken place while the taxpayer is alive. Priv. Ltr. Rul. 2002-04-038 (Oct. 30, 2001).

In one case, the account holder of an IRA removed the funds from his IRA and transferred them into a nonqualified annuity through American Express Life Insurance

Company. Of course, the following year he received an I.R.S. Form 1099-R reporting the amount as income. The taxpayer did not report the income on his return. After the I.R.S. contacted the taxpayer, the financial institution prepared a corrected Form 1099-R and moved the annuity funds into a qualified IRA annuity. The Tax Court had no sympathy for the taxpayer and held that the corrective action was not sufficient, thus requiring the taxpayer to include the amount in his income in the year of withdrawal. *Crow v. Comm'r*, 84 T.C.M. (CCH) 91 (2002).

Note that the above disallowed IRA rollovers (except possibly the *Crow* case) would not likely be treated more favorably by a "kinder and gentler" I.R.S., which now has the authority to grant "waivers" for failure to meet the 60-day deadline for reasons of "hardship," as described in Revenue Procedure 2003-16, 2003-1 C.B. 359. *E.g.,* Priv. Ltr. Rul. 2004-07-023 (Nov. 7, 2003); Priv. Ltr. Rul. 2004-07-025 (Nov. 17, 2003); Priv. Ltr. Rul. 2004-04-056 (Oct. 27, 2003). The "waiver" rulings deal with fact patterns where the recipient could make the rollover, but did not do so correctly or in a timely manner. Nonspouse death beneficiaries cannot do a rollover in the first place.

(k) Non-Spouse "Rollover"

Prior to the Pension Protection Act of 2006, a surviving spouse beneficiary of a qualified retirement plan could roll the decedent's account into an IRA in the surviving spouse's name. However, only the surviving spouse was permitted this opportunity. The new law permits a "rollover" by non-spouse beneficiary of a retirement plan account to an "f/b/o IRA." The f/b/o IRA will then be subject to the RMD rules applicable to non-spouse beneficiaries. If a trust is the beneficiary of the retirement plan, the trust may complete such a rollover. The trust must be a "Qualified Trust" under the §401(a)(9) regulations to do so.

Under IRC §402(f)(2)(A), beginning in 2010, retirement plans are required to offer the non-spouse rollover.

- The IRS issued Notice 2007-7 to provide some additional detail concerning non-spouse rollovers. According to the Notice:

    - The retirement plan does not have to offer the non-spouse rollover option. This is surprising (and perhaps wrong) in light of the wording of the new statute. IRC §402(c)(11)(A) which was amended by the 2008 Pension Act requires tax-qualified retirement plans to offer the non-spouse rollover for plan years beginning after December 31, 2009. Until then, offering the non-spouse rollover is up to the sponsoring employer.

    - The recipient IRA must be established in a manner that identifies the deceased individual and the beneficiary (i.e., "Tom Smith as beneficiary of John Smith").

    - If a trust is the beneficiary and wishes to complete the non-spouse rollover, the Notice states that said trust must meet the requirements of a qualified trust of 1.401(a)(9)-4Q&A-5.

- Unfortunately, the Notice takes the position that the RMD rules applicable to the non-spouse beneficiary under the retirement plan will likewise apply with regard to the IRA. This will not make a difference if the decedent dies after his or her RBD (note, however, that many plans postpone the RBD to actual retirement for employees who are not 5% owners).

  If the decedent dies before the RBD, and the terms of the plan have elected the five-year RMD rule, according to the Notice, the beneficiary cannot get out of the five-year rule by completing the non-spouse rollover. For example, the plan might state that, following death, the beneficiary must take a lump sum distribution sometime before the end of the fifth calendar year following death. This would be viewed as an election of the five-year rule by the plan which apparently could not be changed by the non-spouse rollover.

  In IRS employee plan news issued on February 13, 2007, there was a softening of the foregoing point. If, under the plan, the five-year rule applies for determining RMDs because the account holder died before his or her required beginning date and the plan in question has elected the five-year rule, the non-spouse beneficiary may escape the five-year rule if (i) the plan allows the non-spouse rollover and (ii) the rollover is completed before the end of the calendar year following the calendar year of the participant's death.

In PLR 200717022, the IRS stated that, for the non-spouse rollover rules to apply, a plan need only be amended in time to permit the rollover. In other words, having the language in the plan at the time of the account holder's death should not be required.

(i) Excess *distributions*

If amounts are distributed in any calendar year in excess of the minimum required distribution, no credit will be given in subsequent years for that distribution. Treas. Reg. §1.401(a)(9)-5, Q-2, A-2. However, when a distribution is actually made to the participant during the first distribution calendar year (rather than on the succeeding April 1), amounts so distributed will be credited toward the required distribution to be made on or before the participant's required beginning date.

(m) Penalties for failure to meet MDIB

There are penalties for failing to meet the minimum required distribution under both the minimum distribution incidental benefit (MDIB) and the minimum distribution rules. The 1986 Act amended §4974 to impose on the payee, effective in 1989, a 50 percent tax on the amount by which the retirement plan fails to satisfy the minimum distribution rule or the MDIB. The penalty may be waived if the shortfall was due to reasonable error. Treas. Reg. §54.4974-2, Q-7, A-7.

Under prior instructions to IRS Form 5329, the 50% penalty of IRC §4974(a) for failure to timely withdraw an RMD could be waived for reasonable cause (defined in the regulations), but only if the failure was reported on IRS Form 5329 and accompanied by

payment of the penalty amount. In other words, the IRS got the money first and the reasonable cause waiver was really in the form of a request for a refund. Under the revised instructions issued for the 2007 5329, a waiver request may be made on Form 5329 without payment of the penalty amount.

(n) Liquidity planning

From the tax and investment perspectives, it is generally desirable to take full advantage of the I.R.C. §401(a)(9) rules in order to maximize the income-tax-deferred growth of the account. A prudent plan gives the working spouse, nonworking spouse, and the couple's children the flexibility to take minimum distributions over the maximum time period allowed under I.R.C. §401(a)(9). The rules of §401(a)(9), however, allow income, but not estate tax, deferral. With proper planning, described below, the estate tax marital deduction will be allowable with respect to the account. Thus, no estate tax will be due on an account until the death of the surviving spouse.

Upon the death of the surviving spouse, the rules of I.R.C. §401(a)(9) may allow the beneficiaries to defer distributions for a significant additional period. However, the beneficiaries may be required to withdraw a substantial portion of the account if there is no other source of funds available to pay the estate taxes. Withdrawals are, of course, subject to the imposition of income taxes. Accordingly, clients often wish to provide another source of liquid assets with which to pay estate taxes on the death of the surviving spouse. A common source is an irrevocable life insurance trust that holds second-to-die policies of insurance on the lives of the spouses.

(2) Income in respect of a decedent (IRD)

Both the right to a lump sum distribution and the right to an installment or annuity payout are treated as income in respect of a decedent (IRD) under I.R.C. § 691. M. Carr Ferguson et al., FED. INCOME TAX'N OF ESTATES, TRUSTS AND BENEFICIARIES (3d ed. 1998 & Supp. 2005). As a general rule, IRD is taxed to the recipient in the year of receipt. I.R.C. §691(a)(1). However, the imposition of the income tax is accelerated if an IRD item is transferred within the meaning of I.R.C. §691(a)(2). The rule constitutes a serious trap that the planner must take into account. The transfer of an item of IRD in satisfaction of a pecuniary bequest, including a formula marital deduction bequest, may subject the item to the income tax.

A recipient who includes a retirement PLAN distribution in gross income is allowed an income tax deduction to the extent the distribution gave rise to an estate tax. I.R.C. §691(c). However, if the death distribution is a lump sum distribution, the deduction reduces the amount subject to special income tax averaging. I.R.C. §691(c)(5).

(3) Early distribution penalty, I.R.C. §72(t)

Distributions made before the working spouse attains the age of 59 1/2 are generally subject to a 10 percent penalty under I.R.C. §72(t). However, distributions made to the participant's death beneficiary are not subject to the penalty. I.R.C. §72(t)(2)(A)(ii). This is true even if distributions are made to the beneficiary in installments from the deceased participant's

account. Priv. Ltr. Rul. 90-04 -042 (Nov. 6, 1989). This is also true even when the surviving spouse transfers the deceased's interest to an IRA in the deceased's name and commences distributions as beneficiary (rather than owner) of the IRA. Priv. Ltr. Rul. 94-18-034 (Feb. 10, 1994). In Private Letter Ruling 2001-10-033 (Dec. 13, 2000), the I.R.S. permitted a surviving spouse to roll over the decedent's IRA more than two years after the decedent's death and after the surviving spouse had taken distributions from the decedent's IRA under the exemption from the 10 percent penalty. *See also Charlotte and Charles T. Gee*, 127 T.C. 2006. *However*, if a surviving spouse under 59 1/2 years of age is the death beneficiary and rolls the funds into an IRA in his or her name, subsequent distributions from the IRA are subject to the 10 percent penalty tax. The penalty may be avoided, however, with proper planning under the equal payment exception of I.R.C. §72(t)(2)(A)(iv). Under that provision the penalty tax does not apply to a distribution that is made as part of a series of substantially equal periodic distributions, made annually or more frequently, for the life or the life expectancy of the participant or for the joint lives or joint life expectancies of the participant and his or her designated beneficiary. What constitutes a series of substantially equal periodic payments is defined in I.R.S. Notice 89-25, 1989-1 C.B. 662.

(4) Roth IRAs/§401(k) Accounts

A detailed discussion of Roth Accounts is beyond the scope of this chapter. However, Roth Accounts differ greatly from regular IRAs and §401(k) Accounts in three key respects: (1) contributions to Roth Accounts are made on an after-tax basis; (2) qualified distributions from Roth Accounts are income tax-free; and (3) no minimum distributions from a Roth IRA are required during the joint lifetime of the account holder and the account holder's spouse, if the surviving spouse effectuates a rollover, so that minimum distributions only begin after the death of the Roth IRA account holder and spouse. I.R.C. §408A(a); I.R.C. §408A(e); I.R.C. §408(A)(d)(3)(E)(ii). In sum, an individual can, within the Roth IRA rules of §408A and Roth §401(k) rules, establish a Roth Account with after-tax contributions, allow those contributions to grow on an income-tax-free basis, defer distributions until the death of the individual and his or her spouse and, when minimum distributions commence to the couple's children, they will be income tax free so that the growth on the Roth Account is never subject to income tax.

A key element of Roth planning is the ability to convert a regular IRA to a Roth IRA. Under the Roth IRA rules, an individual with a regular IRA who meets the income limitation described below may cause all or any portion of the IRA to be distributed from the regular IRA and thereafter contributed to a Roth IRA. There is no limit on the amount that may be so converted. The conversion, of course, triggers income tax on the regular IRA distribution. Roth IRA conversions are not subject to the 10 percent penalty of I.R.C. §72(t). I.R.C. §408A(d)(3)(A)(ii). However, as a condition for escaping the 10 percent penalty, the taxpayer may not take distributions from the Roth IRA for a period of five years. I.R.C. §408A(d)(3)(F). The key requirement for the Roth conversion is that the taxpayer's adjusted gross income for the taxable year of conversion may not exceed the limit of I.R.C. §408A(c)(3)(B). Required minimum distributions will be disregarded in computing this limit. I.R.C. § 408A(c)(3)(C)(i)(II). Moreover, after 2009, the income ceiling for Roth conversions is repealed so that any taxpayer may make a Roth conversion. Also, for conversions occurring in 2010, the income caused by the conversion will be taxed one-half in 2011 and one-half in 2012.

The most attractive element of a Roth conversion is the fact that the legislation allows the income tax resulting from a conversion to be paid with funds other than the converted IRA. In a sense, through the Roth IRA conversion process, Congress is allowing the taxpayer to contribute to the Roth IRA the income tax liability associated with the regular IRA. Stated another way, the entire converted IRA, as opposed to the converted IRA net of income tax, is allowed to pick up the Roth IRA benefits (e.g., no minimum distributions and no income tax on distributions). For this reason alone, individuals with significant wealth inside and outside a regular IRA and who have the ability to keep their adjusted gross income within the required conversion limits should consider a Roth conversion.

The Roth conversion may be an excellent planning tool in many circumstances. In the case of an individual who has significant wealth both inside and outside the IRA and who has not yet reached his required beginning date, a Roth conversion may be attractive. By capturing the income tax liability on the IRA at an early date, deferring minimum distributions until the death of the second spouse, and allowing all tax-free buildup to escape income taxation altogether in the hands of the children, the conversion may create the greatest economic benefit to the family.

Under rules pertaining to §401(k) plans, if the §401(k) plan so permits, the participant may designate that all or any portion of his or her §401(k) salary reduction contribution be treated as a Roth contribution. Unlike Roth IRA conversions which have an income ceiling through 2009, there is no income ceiling with regard to Roth §401(k) contributions. A Roth §401(k) account is treated the same as a Roth IRA with the exception that RMDs are required during the account holder's lifetime. Of course, the RMDs could be escaped by taking a distribution from the Roth §401(k) and rolling it into a Roth IRA. Moreover, under the Pension Protection Act of 2006, an individual may complete a Roth conversion by directing a rollover from a regular qualified retirement plan account (including a §401(k), §403(b) or §457(f) plan) directly into a Roth IRA. This applies for tax years after December 31, 2007 and, for 2007 through 2009, will be subject to the income ceiling described above.

As mentioned above, effective in 2010, the rules for converting a regular IRA to a Roth IRA have been liberalized. Under current law, a regular IRA can be converted to a Roth IRA or a non-spouse beneficiary of a retirement plan may roll into a Roth IRA. The conversion of an IRA (or non-spouse rollover) will trigger income in the year of conversion in the amount of the converted account. Prior to 2010, taxpayers with adjusted gross income in excess of $100,000 could not make a Roth conversion or non-spouse rollover. Effective in 2010, the income ceiling is repealed. Moreover, for IRA conversions occurring in 2010, the income caused by the conversion will be taxed one-half in 2011 and one-half in 2012 (or, at the taxpayer's election, be included as 2010 income). If the taxpayer is under 59½ years of age, the income from the conversion will not be subject to the 10% penalty of IRC §72(t), so long as the tax on conversion is paid with funds outside the IRA. Under current law, an inherited IRA may not be converted to a Roth IRA, although this will likely be changed. Post-conversion, only "qualified distributions" may be taken from the Roth account on a tax favored basis. Qualified distributions are those made after the taxpayer is 59½, distributions made to a death beneficiary, distributions attributable to the taxpayer's disability or distributions that qualify for certain special purposes (e.g., first time home buyer). IRC §408A(d)(2)(A). However, any distributions within five years of a contribution to a Roth IRA or conversion of a Roth IRA will not be qualified distributions.

See 408A(d)(2)(B) for the calculations of this five (5) year period. Amazingly, the Roth IRA rules do not create an exception to this five-year rule in the case of death. A non-qualified distribution is one that either fails to satisfy the five-year rule or the triggering event requirement. If non-qualified distributions are made, there is no tax until the total amount initially contributed by the taxpayer has been returned to the taxpayer. However, under §408A(d)(3)(F) there may be a 10% penalty on amounts withdrawn within five (5) years of a conversion by a taxpayer who is under 59½.

A taxpayer who converts a regular to a Roth IRA may later change his mind and "undo" the conversion. If the taxpayer changes his mind about the conversion (i.e., the value of the IRA declines post-conversion), generally, the deadline for a Roth IRA conversion to be recharacterized to a regular IRA is the due date, including extension of the taxpayer's 1040 (or, October 15 of the year following the conversion). The law does not permit "cherry picking" recharacterization within a single IRA. Thus, a smart Roth strategy is to segregate different investments into different traditional IRAs by way of IRA-to-IRA transfers before the conversion occurs. Thereafter, each separate IRA holding separate types of investment funds or investments will be converted. Under current law, each separate IRA may be left converted or recharacterized on a "pick and choose" basis by the October 15th deadline giving the taxpayer significant flexibility. Remember, if a taxpayer is over 70½ and beyond his/her required beginning date, the RMD for the calendar year in question may not be converted to a Roth IRA. Rather, it must be distributed before the conversion.

Of course, the decision to convert a regular IRA to a Roth IRA is tricky. Of course, the longer the Roth account remains undisturbed, the more likely there will be a benefit to the conversion. Therefore, conversions while husband and wife are both alive and with a joint life expectancy of at least 15 years, can make a lot of sense; provided they will not have a need for the funds. Conversion in years where a taxpayer will be in a low income tax bracket or has business or other ordinary losses also makes sense, so long as there is no near term need for the funds. Conversion should also be considered in years where a taxpayer might make large charitable contributions. One might even consider conversion close to death if the converted IRA will be left to a generation-skipping trust for grandchildren which is a "qualified trust". By doing this, the income tax will be removed from the estate and, if the trust is properly structured, RMDs from the account will be measured based on the grandchild's life expectancy.

There is a misconception that estate planning with Roth IRAs is easier than with regular IRAs. These guidelines should be considered:

- Of course, Roth accounts should be left to a surviving spouse so as to permit the rollover and avoid any lifetime RMDs.

- Roth accounts left to a credit shelter trust or a Q-Tip trust are a bit of a waste as the tax-free growth will be shut down fairly rapidly (i.e., based on the life expectancy of the surviving spouse). In short, no stretch out will be available under this scenario.

- As with traditional IRAs, it should be possible with proper planning, to use a non-pro rata division of the community property to have the Roth pass to the surviving spouse in exchange for other assets passing to a credit shelter trust.

- Roth accounts left to children will be subject to the same RMD rules as regular IRAs. That is, smart planning suggests creation of separate accounts post-death and stretch out RMDs keyed to each beneficiary's life expectancy under Treasury regulations.

- Trusts which are beneficiaries of Roth accounts need to be structured as "conduit trusts" or accumulation trusts with appropriate firewall language so that RMDs will be computed with reference to the trust beneficiary's life expectancy. In other words, all of the RMD complexities of trusts as IRA beneficiaries apply to Roth IRAs in the same way as regular IRAs. Remember, even though qualified distributions to a trust from a Roth IRA will not be income for tax purposes, a portion will be income for fiduciary accounting purposes.

- An estate should not be the designated beneficiary of a Roth account. This is because the post-death RMDs will be calculated with reference to the deceased account holder's remaining life expectancy.

- Unlike traditional IRAs, Roths should not be left to charity because the income tax has already been paid.

§13.3 ESTATE TAX

On the death of the working spouse, his or her community property interest in the account is includible in his or her gross estate under I.R.C. §2039. However, if his or her interest passes to the surviving spouse, it may qualify for a marital deduction under I.R.C. §2056. The key planning question is how the included amounts will be coordinated with the client's estate plan. Generally, the surviving spouse will roll over the account to an IRA. This will defer the estate taxes on the funds until the surviving spouse's death.

At the current time, the status of our estate tax laws is in a state of flux. For the years 2011 and 2012, the death tax exemption under IRC §2010 is $5 million. Thereafter, it is anyone's guess as to the future of the estate tax.

- The high death tax credit means it is more likely that clients wishing to fully fund the credit shelter trust of the first spouse to die may need to involve their retirement plans or IRAs.

- To preserve flexibility, it is likely that planners will rely heavily on disclaimers.

- Under IRC §2010(c)(2) the unused death tax exemption of the first spouse to die may be transferred to the surviving spouse for use in his or her estate provided that an election is made in the estate of the first spouse to die. Under current law, this only applies if the first spouse dies in 2011 or 2012. This provision might be helpful for couples with large retirement accounts as the account could pass to the surviving spouse (instead of a credit shelter trust) without loss of the federal death tax exemption of the first spouse to die. Of course, this is not available for Washington state estate tax purposes.

Over the years, practitioners have questioned the inclusion of IRAs and retirement plan benefits in estate plans without some discount or adjustment for the income tax associated with

those accounts on distribution following death. In Tech. Adv. Mem. 2002-47-002 (July 16, 2002), the I.R.S. explicitly rejected any such discount, even if the estate needed withdrawals to meet cash needs. Tech. Adv. Mem. 2004-44-021 (June 21, 2004). *See also Smith v. United States*, 391 F.3d 621 (5th Cir. 2004) and *Estate of Davis Kahn,* (2005) 125 T.C. No. 11..

If the nonworking spouse is not a citizen of the United States, it is very difficult to obtain the income tax benefits of the rollover and the estate tax benefits of the estate tax marital deduction. First, the surviving spouse must be the beneficiary of an account to be able to roll it over into an IRA in her name. Second, to qualify for the marital deduction the arrangement must meet the requirements of I.R.C. §2056A. In Private Letter Ruling 96-23-063 (Mar. 13, 1996), the surviving spouse, who was not a U.S. citizen, rolled over the decedent's account to an IRA in her name and entered into an agreement with the IRA custodian to comply with the I.R.C. §2056A qualified domestic trust rules. The I.R.S. allowed the marital deduction. The qualified domestic trust (QDT) regulations contain specific rules concerning qualification of an IRA or retirement plan for QDT treatment. *E.g.,* Treas. Reg. 20.20 26A-4(b)(7)(iii).

(1) Disclaimer

Estate plans are often designed so that a qualified disclaimer under I.R.C. §2518 may be used to modify a plan after the death of the transferor. For example, a client may wish to allow flexibility as to how much and exactly what assets will be used to fund a credit shelter trust. A client who wishes to leave this decision to his or her surviving spouse can leave everything outright to the surviving spouse and provide that any property that the surviving spouse disclaims will pass to a credit shelter trust. However, note that the surviving spouse can only disclaim the working spouse's share of an account — the surviving spouse cannot disclaim his or her own interest in it. The regulations specifically address the impact of disclaimer. Treas. Reg. §1.401(a)(9)-4, Q-4, A-4(a) permits a change of beneficiary for minimum distribution purposes by reason of disclaimer.

Note that if the surviving spouse disclaims in favor of one or more of the couple's children, the minimum distributions will be driven by the beneficiaries resulting from the disclaimer. If the entire account is disclaimed in favor of the children, then the children are the only designated beneficiaries. If, by December 31 of the calendar year following death, the account is divided as per Treas. Reg. §1.401(a)(9)-8, Q-2, A-2(a), the children will each have their own life expectancy to compute minimum distribution. The account could be so divided by the December 31 date to facilitate separate distribution periods and the spouse could rollover his or her portion of the account.

Qualified disclaimers of retirement plan benefits and IRAs require careful predeath planning. In the context of an IRA, the practitioner should review the custodial account agreement itself to make sure a disclaimer will be recognized. Retirement plans involve issues of plan language as well as spousal rights under ERISA. The beneficiary designation should contemplate disclaimer or death of the surviving spouse. Thus, for example, the primary beneficiary could be the spouse, with the instruction that any portion disclaimed by the spouse would pass to the credit shelter trust, and the secondary beneficiary (to take in the event the spouse is deceased) would be the couple's children.

A question of key concern with respect to postmortem estate planning has been the interplay between the required minimum distribution (RMD) of a deceased account holder who had lived beyond his or her required beginning date and the concept of "acceptance" under the disclaimer regulations. For example, assume a widow, age 75, named her child as primary beneficiary of an IRA with a trust for a grandchild named as secondary beneficiary. Also assume that, in the calendar year of death, the widow had not taken her RMD. Now the child is contemplating disclaiming all or a part of his or her interest in favor of the trust for the grandchild. Under the disclaimer rules, absent an "acceptance," the child will be able to make the disclaimer decision as late as nine months after the widow's death. However, assume the widow died in December so that the RMD for the year of death must occur by the end of the year (long before the disclaimer decision must be made). The question is whether the RMD could be paid to the child without the child being deemed to have "accepted" the IRA, thus cutting off the disclaimer opportunity. According to Revenue Ruling 2005-36, 2005-26 I.R.B. 1368, the primary beneficiary may take the RMD without being deemed to have accepted the IRA. The ruling notes that the primary beneficiary should take both the RMD and postdeath earnings on the RMD amount.

Even after this Revenue Ruling, the planner should take care to avoid an "acceptance" in the processing of the RMD. Quite often, an IRA custodian will insist that, as a precedent to taking the RMD, the primary beneficiary must go through the process of changing the account from the decedent's name into a "beneficiary" or "f/b/o" account in the name of the primary beneficiary. Under the logic of the Revenue Ruling, this should not be a problem. However, this type of reregistration process should be avoided if possible.

If the IRA is later to be segregated into separate IRAs under the separate account rules, there does not need to be a reconciliation with regard to the RMD. In other words, the primary beneficiary may, in the I.R.S.'s eyes, retain the full RMD amount.

Although not explicit in the ruling, there is the possibility that a distribution taken by the primary beneficiary other than an RMD could be treated likewise. For example, under the logic of this ruling, the primary beneficiary could take a withdrawal from the IRA and be treated as having accepted that amount without accepting the entire IRA. Of course, to avoid a problem, the practitioner would clearly document with the custodian that only the distribution is being accepted.

The Revenue Ruling's results are not contingent upon whether a disclaimer is structured as a pecuniary or a fractional disclaimer. Either way, the primary beneficiary may retain the RMD (and postdeath earnings), yet disclaim a pecuniary amount or fraction of the underlying IRA.

Although not addressed in the ruling, the planner should give careful consideration to how the separate IRAs will be "funded" after disclaimer. For example, if there is a pecuniary disclaimer, the safest course of action may be a liquidation of the assets of the IRA so that the separate IRAs may be funded with actual dollar amounts. In the case of a fractional disclaimer, it may be safest to have the holdings of the IRA divided according to the fractions established through the disclaimer. Otherwise, the disclaimant might be viewed as having exercised control over the disclaimed assets following the disclaimer.

(2) Funding the credit trust; non-pro rata distribution planning

Under IRC §2010(c)(2) the unused death tax exemption of the first spouse to die may be transferred to the surviving spouse for use in his or her estate provided that an election is made in the estate of the first spouse to die. Under current law, this only applies if the first spouse dies in 2011 or 2012 (and we do not know the future of this provision after 2012). This provision might be helpful for couples with large retirement accounts as the account could pass to the surviving spouse (instead of a credit shelter trust) without loss of the federal death tax exemption of the first spouse to die. Of course, this is not available for Washington state estate tax purposes.

Example: Assume Jim and Sally have $8 million of community property comprised of Jim's $6 million IRA and $2 million of other assets. Assume Jim's Will leaves his share of the probate community assets to a credit shelter trust for Sally's benefit and his IRA beneficiary designation names Sally as outright beneficiary. At Jim's death, Sally rolls the IRA into her name and Jim's $1 million interest in the other assets passes into a credit shelter trust for Sally's benefit. Also assume that an estate tax release is filed for Jim's estate transferring the unused exemption to Sally. When Sally dies, her estate will be $7 million comprised of her interest in the other assets ($1 million) plus the $6 million IRA. She will have her $5 million federal death tax exemption and, assuming Jim's estate made the proper election, she will have the balance of Jim's unused exemption ($4 million) for total exemptions of $9 million. Therefore, no federal estate tax will be owing. How this will all work after 2012 is yet to be determined.

Of course, another alternative to utilizing the death tax exemption of the first spouse to die yet, at the same time, allowing the retirement assets to pass to the surviving spouse is the non-pro rata funding technique described below.

Two Private Letter Rulings issued in 1999 provide excellent guidance for funding the credit shelter trust in a community property situation. Assume that the couple has a net worth which will subject the family to estate tax on the death of the second spouse (or, alternatively, that full use of the credit shelter amount of the first spouse to die will be necessary to prevent estate tax on the death of the second spouse). Also assume that a significant portion of the couple's net worth is in a rollover IRA. Upon the death of the account holder, the best tax outcome would result if all of the IRA were allocated to the surviving spouse for rollover and stretch out planning, and other assets of the community were used to fund the credit shelter trust. In a sense, the estate exchanges with the spouse a portion of the decedent's community interest in the IRA for the surviving spouse's interest in non-IRA community assets of an equivalent value.

In Private Letter Ruling 1999-25-033 (Mar. 25, 1999), an IRA was payable to a revocable living trust. The surviving spouse, as trustee of the revocable living trust, proposed to allocate the former community property so that non-IRA assets would pass to the irrevocable portion of the trust (representing the decedent's community property) and the IRA would pass to the revocable portion of the trust (representing the survivor's community property), with the IRA later distributed directly to the surviving spouse. The I.R.S. approved this non-pro rata division and rollover and specifically stated that acceleration of IRD would not result. Following this ruling, a practitioner could structure the situation so that the decedent's half of the IRA is payable to the estate, and the surviving spouse, as sole personal representative of the estate, is given the power

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(preferably under the language of the will) to allocate the decedent's half interest to himself or herself in a non-pro rata division in exchange for other assets that will pass according to the credit shelter trust and marital share terms of the will.

In Private Letter Ruling 1999-12-040 (Dec. 29, 1998), an IRA was payable to a revocable living trust that provided that on the death of the account holder spouse, the trust would be divided into a credit shelter trust and a "survivor's trust." The surviving spouse was given complete access to the assets of the survivor's trust. The account holder designated the revocable trust as beneficiary of the IRA. After the account holder's death, the surviving spouse requested a ruling from the I.R.S. that the non-pro rata allocation of the IRA to the survivor's trust (for distribution to her and rollover by her) in exchange for other trust assets to fund the credit shelter trust would not cause income to be recognized on the IRA. The I.R.S. stated that because both local law and the trust document permitted non-pro rata distribution powers, income would not be accelerated, and the rollover was permitted. From a planning standpoint, the rationale of this ruling should apply whether a revocable living trust or a will is involved. If a will is used, the terms could state that the residue will pass to a trust to be divided, on a fractional basis, between a marital share and a credit shelter trust. The will should also provide flexibility for non-pro rata distributions and the direction that, to the extent possible, in the non-pro rata distribution process, the IRA should be allocated to the marital share to be distributed to the surviving spouse for rollover.

In Private Letter Ruling 2000-32-044 (May 15, 2000), the estate was the designated beneficiary of an IRA and a §403(b) annuity. The surviving spouse was the sole personal representative of the estate and a one-third residuary beneficiary. The I.R.S. allowed the surviving spouse to allocate the IRA and the §403(b) annuity to the surviving spouse in a "non-pro rata distribution" in satisfaction of her one-third residuary beneficiary interest. The I.R.S. also sanctioned the surviving spouse's rollover of these benefits.

In Private Letter Ruling 2000-52-041 (Oct. 22, 2000), an IRA was payable to a revocable living trust and the spouse had the right to remove the IRA. The service ruled that, following removal, a rollover would be permitted. Although this Private Letter Ruling involved the pre-2001 proposed minimum distribution regulations, it was issued after the 2001 proposed regulations. In another set of facts reviewed by the I.R.S., the husband passed away without naming a beneficiary of his IRA. The husband had died intestate. Under the laws of the state of domicile, the wife was the sole beneficiary of an intestate estate. The wife was appointed personal representative of the decedent husband's estate. Under the IRA custodial account, failure to designate a beneficiary resulted in the IRA proceeds being paid to the decedent's estate. The wife proposed to use her powers as personal representative to allocate the IRA proceeds to herself for rollover. In Private Letter Ruling 2001-29-036 (Apr. 23, 2001), the I.R.S. approved the rollover. Unfortunately, at the end of the Private Letter Ruling the Service noted that because the decedent passed away before the new minimum distribution regulations (issued in 2001), the ruling did not address "any issues that may arise under the proposed regulations."

In Private Letter Ruling 2002-34-019 (May 13, 2002), the I.R.S. ruled that a non-pro rata allocation of various IRAs to charities that were residual beneficiaries of an estate did not accelerate income under I.R.C. §691. This is a further indication that the I.R.S. does not view

assignment or transfer of interests in IRAs in the estate process in satisfaction of a fractional interest as an income tax event.

There are two regulations that raise questions concerning the non-pro rata technique:

> 1) The fact that an employee's interest under the plan passes to a certain individual under a will or otherwise under applicable state law does not make that individual a designated beneficiary unless the individual is designated as a beneficiary under the plan. Treas. Reg. §1.401(a)(9)-4, Q-1, A-1.
>
> 2) [For the surviving spouse to elect to treat the decedent account holder's IRA as his or her own and thereby avoid an actual distribution and rollover], "the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust. Treas. Reg. §1.408-8, Q-5, A-5(a).

Did the Treasury intend these statements to halt the practice of running all or a portion of an IRA through an estate, revocable living trust, or credit shelter trust, and then through a non-pro rata distribution, and then back out to the surviving spouse for a rollover?

In Private Letter Ruling 2003-46-025 (Aug. 21, 2003), the I.R.S. again ruled that the surviving spouse may roll over an IRA when a living trust was the beneficiary and the spouse had the unilateral power to allocate the IRA to herself. This ruling apparently confirmed that the final regulations have not eliminated the indirect rollover technique.

It should be noted that Marjorie Hoffman, the primary drafter of the final regulations, has indicated that although the final regulations do not expressly so state, a spousal rollover will be available under the following set of facts: 1) the IRA is payable to a trust in which the spouse is the beneficiary, and 2) the trustee of the trust directs that all or a portion of the IRA be paid directly to the surviving spouse. The surviving spouse could then take the payment so received and roll it into an IRA. Be aware that this is merely a statement that Marjorie Hoffman has made (although one could read the preamble to the final regulations as authorizing such a rollover).

Private Letter Ruling 200634065 contained a statement by the IRS broadly interpreting the ability of the surviving spouse to complete a rollover through a trust or an estate. In this case, the decedent's IRA was payable to his estate. The decedent's wife was the sole beneficiary and personal representative of the estate. The wife's plan was to have the custodian distribute the IRA to the estate and from the estate to the spouse and, finally, from the spouse to a rollover IRA within 60 days of the initial distribution. The IRS noted the distinction between an inherited IRA (not eligible for a rollover) and the exception to the inherited IRA for payment to a surviving spouse under IRC §408(d)(3)(C)(ii). The IRS then dealt with the statement in the final §401(a)(9) regulations pertaining to the surviving spouse's ability to elect to treat the decedent's IRA as his or her own. The IRS noted that this type of election is only available if the surviving spouse is the sole beneficiary of the IRA with an unlimited right to make a withdrawal. In addition, the IRS noted the statement in the regulations that the surviving spouse will not be able to elect to treat the decedent's IRA as his or her own if the beneficiary of the IRA is a trust (even

if the surviving spouse is the sole beneficiary of the trust). The IRS went on to differentiate this language from the situation where the surviving spouse actually receives the distributed IRA funds through an estate or trust and concluded as follows:

[A] surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased 's IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets ***pass through either a trust and/or an estate***. (Emphasis added.)There has been much discussion about the best method to take advantage of the above Private Letter Rulings. Of course, in a perfect world where the complexities and costs of a revocable living trust would be of no consequence, it would be easy to follow the Private Letter Rulings by naming the surviving spouse as sole trustee of the revocable living trust and giving the spouse, as trustee, full non-pro rata division and distribution powers. The revocable living trust could be directly named as primary beneficiary, in which case all of the issues concerning trusts as beneficiaries would need to be addressed. As an alternate approach, the revocable living trust could be the beneficiary in the event the surviving spouse disclaims. Private Letter Ruling 97-07-008 (Nov. 12, 1996) permits a surviving spouse to exercise his or her non-pro rata distribution (and presumably non-pro rata division) powers over assets disclaimed by the spouse.

Another approach is for the couple to use wills for their estate plan. If the estate is named as beneficiary, then presumably the surviving spouse, as sole personal representative of the estate, could allocate the IRA to him or herself in a non-pro rata division of the former community property. Another approach would be to name the surviving spouse as beneficiary with the right to disclaim in favor of the estate. Following the disclaimer, the disclaimed portion of the IRA would be involved in the non-pro rata division of the former community property. The problem with this approach is that there is not absolute certainty about the impact on the minimum distribution rules of the estate being a disclaimer beneficiary on the account holder's required beginning date. Yet another approach is to name the surviving spouse as sole personal representative of the estate and sole trustee of the credit shelter trust and give the surviving spouse, as trustee and personal representative, full and complete authority to engage in a non-pro rata division of the former community property involving all of the couple's assets following death. If the credit shelter trust is in the disclaimer position, then, following actual disclaimer, the surviving spouse (individually, as trustee and personal representative) would complete the non-pro rata division of the former community property. This technique should fall within the protection of Revenue Ruling 76-83, 1976-1 C.B. 213, which is the support for the two community property Private Letter Rulings discussed above

Here are examples of the many Private Letter Rulings involving a rollover by a surviving spouse where a trust (or estate) was named as beneficiary were issued:

- <u>LR 200603032</u>. In this private letter ruling, a trust was the beneficiary of an IRA. The surviving spouse was sole trustee of the trust. The trust instrument gave the trustee the power to withdraw the IRA and pay it to the surviving spouse. As trustee, the surviving spouse proposed taking distribution of the IRA in the name of the trust then paying the distribution over to the surviving spouse. Thereafter, the surviving spouse, in her personal capacity, proposed rolling the amounts she received into an IRA.

The IRS stated that, although the regulations generally preclude a rollover if the IRA is paid to the trust then to the surviving spouse (even if the spouse is the sole beneficiary of the trust), the rollover will be permitted under the facts of the ruling because the surviving spouse was the sole trustee of the trust in addition to being the sole beneficiary of the trust. This private letter ruling is a clear indication that previous letter rulings issued by the IRS allowing "indirect rollovers" have not been revoked.

- LR 200603036. This private letter ruling involved a retirement plan payable to a trust for a surviving spouse. Under the terms of the trust, the surviving spouse was entitled to all of the income and trust principal for her health, maintenance, education and support. The surviving spouse was sole trustee of the trust and represented to the IRS that, as trustee, she had the power to direct payment of the total amount of the retirement plan directly from the retirement plan to herself. The surviving spouse proposed to the IRS that she be allowed to rollover this distribution. Following the logic of the preamble (and citing Reg. 1.402(c)-2) the IRS stated that, even though the spouse was not the beneficiary of the retirement plan, payment directly to the surviving spouse at the direction of the trustee was enough to permit the surviving spouse to complete the rollover.

- LR 200605019. This letter ruling involved several IRAs, several problems and overall a nasty situation. Nonetheless, the IRS permitted an indirect rollover of some IRA funds (i.e., distribution to the trust then to the surviving spouse followed by a rollover) and distribution of other IRA funds directly from the IRAs to the spouse at the spouse's direction as trustee of the trust. All were approved for rollover.

- LRs 200644028, 200644031 and 200705032. All of these rulings deal with indirect rollovers by a surviving spouse:

- In LR 200644028, the decedent died after his RBD with an IRA. A trust was beneficiary. The wife was the sole trustee and she proposed directing the custodian to do an IRA-to-IRA transfer into an IRA in wife's name. The IRS permitted this under a narrow reading of Reg. 1.408-8, Q-5A-5(a). The IRS interprets this regulation as preventing a spouse from electing to treat the decedent's IRA as her own (but not preventing the spouse from a rollover or IRA-to-IRA transfer).

- In LR 200644031, the decedent died after his RBD naming an estate as beneficiary of his IRA. The surviving spouse was the sole personal representative and, after specific bequests, the entire estate passed to the surviving spouse. Moreover, the IRS noted that the surviving spouse had the right to make ***non-pro rata distributions*** in settling the estate.

  The surviving spouse proposed to allocate the IRA to the spouse in a non-pro rata distribution and direct the custodian of the IRA to complete a direct IRA-to-IRA transfer into an IRA in the surviving spouse's name.

  The IRS noted that the surviving spouse could not, in these circumstances, elect to treat the IRA as her own. However, if the surviving spouse actually receives the distribution,

she may roll it over, even if she is not the designated beneficiary. In this case, the IRS treated the IRA-to-IRA transfer as such a rollover.

- In LR 200705032, the decedent died naming his revocable living trust as beneficiary of several IRAs. The revocable living trust provided for a marital deduction trust which was funded with a pecuniary formula. Under the terms of the marital deduction trust, the spouse had an absolute right to withdrawal principal. The spouse proposed to the IRS that the IRAs be distributed to the trust and, thereafter, immediately distributed to the spouse for rollover. Again, the IRS narrowly read Reg. 1.408-8QA5 so as to prevent a spouse from electing to treat an IRA payable to a trust for the benefit of the spouse as his or her own. Rather, the IRS stated as follows:

> A surviving spouse who actually receives a distribution from an IRA is permitted to roll that distribution over into his/her own IRA even if the spouse is not the sole beneficiary of the deceased's IRA as long as the rollover is accomplished within the requisite 60-day period. A rollover may be accomplished even if IRA assets pass through either a trust and/or an estate.

This ruling is also interesting from the standpoint that no mention was made of the possibility of IRD acceleration by virtue of the allocation of the IRAs to the marital trust in satisfaction of the pecuniary marital gift. Nonetheless, this is not a position the planner should get him or herself into. If there is the possibility of allocating an IRA to a marital bequest, the marital bequest should be structured as a fractional gift.

PLR 200704033 involved the reformation of a trust to permit a spouse the right to allocate an IRA to herself without anyone's consent. Based on this, the spouse was permitted to complete a rollover. (Also, in this ruling, there was a problem with the 60-day rollover period which the IRS waived.)

PLR 200703047 also involved a reformation allowing two IRAs to be paid to the surviving spouse. Also, the 60-day rollover deadline was botched in this private letter ruling and the IRS permitted an extension.

In PLR 200703035 an estate was beneficiary, but the spouse was the sole personal representative and had the right to allocate the IRA to herself. The rollover occurred by a distribution from the account holder's IRA to a non-IRA account of the spouse. The non-IRA account of the spouse was to be rolled into an IRA in the spouse's name within 60 days. However, the 60-day time frame was missed. Again, the IRS approved the rollover and waived the 60-day rollover deadline.

In PLR 200705032, the question was an independent trustee's allocation of an IRA to a trust over which the spouse had a right of withdrawal. The IRS noted that this allocation was consistent with the co-trustees' fiduciary obligations and permitted the spouse to rollover the IRA following its allocation to said trust.

As a result of the above, the prudent course of action following death of the account holder spouse and a disclaimer by the surviving spouse, may be to have the surviving spouse in his or her individual capacity and as personal representative and trustee, to request an actual distribution of the deceased spouse's IRA to the surviving spouse. The surviving spouse would then rollover within the 60-day rollover period. In the non-pro rata settlement of the former community property, non-IRA assets would be allocated to the credit shelter trust in exchange for the portion of the IRA disclaimed by the surviving spouse. This may allow the practitioner to be within the 1999 private letter rulings as well as make use of the theory that a spouse may rollover a distribution made directly to him or herself at the direction of a trustee. The added advantage to this approach is that the 1099 will be issued by the IRA custodian directly to the surviving spouse which, of course, helps to prevent attracting unnecessary scrutiny from the IRS. It should be noted that these 2006 letter rulings follow similar logic of a letter ruling issued late in 2005 (LR 20054901).

In PLR 200938042, an IRA was payable to a testamentary trust for the surviving spouse created under the decedent's will. The surviving spouse disclaimed her interest under the trust. Apparently, under the IRA beneficiary designation and custodial account, this caused the beneficiary designation to "fail" so that, under the custodial account, the estate became beneficiary. The surviving spouse thereafter sought to allocate the IRA from the estate to herself as part of her outright bequest from the estate and requested the IRS to sanction the rollover. The IRS ruled that because the residue of the estate passes outright to the surviving spouse and, as a result of the disclaimer, the residue of the estate included the IRA, the spouse essentially became the sole beneficiary of the IRA. The IRS noted that the surviving spouse may not elect to treat the IRA as her own, but may, by an actual distribution, rollover the IRA into an IRA in her name.

In PLR 200944059, the IRS showed that there is a limit to its approval of indirect rollovers. In this case, the IRA was payable to a trust for a surviving spouse. She was the sole trustee and income beneficiary of the trust. Distributions to the trust were permitted based on health, maintenance, education and support. Nonetheless, she obtained a state court order allowing her to cause the IRA to be distributed to the trust and then distributed to her. She asked the IRS for a ruling allowing her to roll the funds into an IRA in her name.

The IRS stated that because she did not have unrestricted access to the IRA she could not be treated as the IRA beneficiary for rollover purposes. Moreover, the IRS noted that distribution of the IRA to the spouse would have constituted a gift from the remainder beneficiaries.

(3) QTIP trust

As discussed previously, tremendous tax advantages can result if the nonworking spouse is the outright beneficiary of an account. A client should forego these benefits only if significant countervailing nontax reasons exist. For example, the working spouse may wish to prevent the nonworking spouse from having direct control over the working spouse's assets. In such a case, the client may wish to create a credit shelter trust to be funded with the credit shelter amount and a QTIP trust to be funded with the remainder of the working spouse's estate. Because of the income tax liability associated with the account, the planner will most likely want to name a QTIP trust as beneficiary. Of course, a lump sum payment to the QTIP trust could easily qualify

for the estate tax marital deduction. Priv. Ltr. Rul. 97-29-015 (Apr. 16, 1997). Dribbling out the account to the QTIP trust, however, is a tricky task.

Any distribution from the retirement plan or IRA must comply with I.R.C. §401(a)(9). In short, a minimum distribution must be made each year and the period of distribution must comply with the rules of §401(a)(9). It is important to note that the I.R.C. §401(a)(9) minimum distribution is not tied to the actual income earned by the account. In the early years of a "dribble-out" distribution, it is typical for the minimum distribution required by §401(a)(9) to be quite less than the actual income earned by the account. As discussed above, a trust should only be designated as a beneficiary with great care.

Property qualifies for the marital deduction under the QTIP rules of I.R.C. §2056(b)(7) only if (a) the *surviving* spouse is entitled to all of the income payable at least annually during his or her lifetime, (b) the surviving spouse is the only one to whom any distributions can be made during his or her lifetime, (c) the surviving spouse has the right to require the trustee promptly to convert unproductive property to productive property, and (d) a proper election is made on I.R.S. Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return.

Revenue Ruling 2000-2, 2000-3 I.R.B. 305, replaced and superseded Revenue Ruling 89-89, 1989-2 C.B. 231, with regard to qualification of an IRA as QTIP property when the IRA is payable to a QTIP trust. Under the facts of the ruling, the decedent died before his required beginning date and a testamentary QTIP trust was named as beneficiary of the decedent's IRA. The decedent's wife was the income beneficiary of the QTIP trust and the decedent's children were the sole remainder beneficiaries of the trust. The testamentary QTIP trust fully complied with the requirements of I.R.C. §2056(b)(7). In addition, language in the QTIP trust gave the surviving spouse the power to demand that, in any year, the income of the IRA be withdrawn from the IRA, passed through the QTIP trust, and distributed to the spouse. In the Revenue Ruling, the I.R.S. noted that the QTIP trust was a "qualified trust" for determining minimum distributions after the decedent's death. The I.R.S. also stated that the beneficiaries taken into account to determine minimum distributions were the surviving spouse and the decedent's children. This is consistent with Treas. Reg. §1.401(a)(9)-5, Q-7, A-7(c)(3)(Ex. 2). Because the surviving spouse had the shortest life expectancy, minimum distributions to the trust would be computed with reference to the life expectancy of that surviving spouse and were required to begin on December 31 of the calendar year following the calendar year of the decedent's death.

In *structuring* distributions to a QTIP trust, the requirements of the income and estate tax rules must be satisfied. The I.R.S. provided important guidance in Revenue Ruling 2000-2. .To satisfy the rules, the lawyer must study the distribution provisions of the applicable retirement plan or IRA. Many IRAs permit virtually any type of distribution method and allow the account holder or beneficiaries to make withdrawals of any amounts at any time, provided the §401(a)(9) rules are satisfied. Some qualified retirement plans allow the death beneficiary the option of accelerating and withdrawing the account at any time after the working spouse's death. If the planner is dealing with a document where such flexibility exists, meeting the requirements of Revenue Ruling 2000-2 may be fairly easy. However, if the plan document is restrictive with regard to distributions, it may be virtually impossible for the planner to structure the beneficiary designation and QTIP trust language to satisfy the requirements of Revenue Ruling 2000-2.

The IRS released Revenue Ruling 2006-26 which deals with the concept of "Q-Tipping" an IRA. The Revenue Ruling builds upon Revenue Ruling 2000-2 by including an extensive discussion of the interplay between various income and principal laws and the requirement that all income be distributed to (or be subject to withdrawal by) the surviving spouse. Essentially, situation 1 and situation 2 described in this new Revenue Ruling sanction Q-Tip treatment where the trustee has the right to convert principal to income or to convert the trust to a 4% unitrust as provided by RCW 11.104A.020 and RCW 11.104A.040. However, in regard to the power to convert principal to income, the Revenue Ruling dealt with the Uniform Principal and Income Act ("UPIA") version of the law which states that only 10% of any distribution (i.e., an RMD) will be considered income. In this regard, the IRS notes that the 10% figure will not satisfy the income requirements for Q-Tip treatment. Therefore, the trustee must, under said UPIA provision, exercise the authority to convert additional amounts to income. In response to Revenue Ruling 2006-26, the Uniform Law Commission amended the revised Uniform Principal and Income Act to provide the "trust within a trust concept" under which internally generated income of the IRA (determined as if it were a separate trust) would be treated as income in the case of a Q-Tip trust.

RCW 11.104A.180 was recently amended to provide the trust within a trust approach (RCW 11.104A.180(b)). However, if the IRA does not generate or calculate income in such fashion, four percent (4%) of the total value of the IRA will be treated as income. RCW 11.104A.180.

The Revenue Ruling also addresses which beneficiaries of the Q-Tip trust are taken into account to determine the beneficiary with the shortest life expectancy. The IRS specifies that, unless the Q-Tip trust is a "conduit trust" (which makes little sense in the context of a Q-Tip trust) the beneficiaries will be the surviving spouse and the remainder beneficiaries.

Finally, as stated above, Q-Tipping an IRA has a tremendous income tax cost as distributions, both during and after the surviving spouse's life will be computed with reference to the surviving spouse's life expectancy. In short, the possibility to stretch out the IRA is lost. Moreover, any portion of the RMDs accumulated by the trustee may be subject to tax at very high trust income tax rates.

(4) Charity as beneficiary

If the account holder is charitably inclined, the best overall tax results may be achieved if he or she leaves a retirement plan or IRA to a tax-exempt charity. Of course, this does not apply to a Roth account because income taxes have already been paid. As charitable organizations are exempt from income taxes, no income taxes will ever be imposed on the deferred income represented by the account. However, the client will have to balance the benefits of making the gift to charity against the significant additional economic growth that the client's family might enjoy over an extended distribution period if the account were left to them. In other words, from a practical standpoint, naming the charity as beneficiary amounts to a gift of both the date of death value of the account as well as the substantial future economic growth that is possible under I.R.C. §401(a)(9). The planner should, of course, verify the exact name of the charity and confirm that it is an exempt organization. Based on the author's calculations, there are scenarios in which the account holder's children (or GSTT trusts for grandchildren) would be better off

receiving IRA or retirement plan benefits, rather than cash or securities, because the power of continued income tax-deferred growth is quite significant. Generally, this is the case when there are sufficient nonretirement plan or IRA assets to pay estate taxes on the IRA or retirement plan and the children will have the economic ability to take only minimum distributions for some period of time.

Care should be taken in naming a charity as beneficiary of part of the account. A charity is not a "qualified trust" for purposes of I.R.C. §401(a)(9). Naming the charity as a sole beneficiary of an account does not create any particular problems with the minimum distribution rules, because after the required beginning date the participant will be entitled to use the Minimum Distribution Table to determine distributions during his or her lifetime. The same treatment would be available after the required beginning date even if the charity and individual beneficiaries were named beneficiaries of a particular account. However, when beneficiaries include both individuals and a charity, separate accounts under Treas. Reg. §1.401(a)(9)-8, Q-2, A-2(a) or separate IRA accounts should be considered, to ensure that following the participant's death, the individual beneficiaries will have the right to take distributions over their respective lifetimes.

It should be noted that during the participant's lifetime, a distribution directly to the charity will be treated as a distribution to the participant followed by a contribution to the charity. Any such distribution is subject to regular income tax and the I.R.C. §72(t) penalty for premature distribution. Under the Pension Protection Act of 2006, special rules apply to Qualified Charitable Distributions ("QCDs") for 2006-2009 (extended for 2010, 2011 and 2012). Under these rules, a taxpayer may exclude from income QCDs of up to $100,000 per year. There are several requirements for a QCD:

- The QCD must be made directly from the IRA to the charity (the account holder cannot receive the funds him or herself).
- The QCD must be made after the date the IRA owner has attained age 70½.
- The IRA may be a regular or Roth IRA but may not be a SEP or Simple.
- The charity must be one described in I.R.C. §408(d)(8)(F) which excludes donor advised funds and certain supporting organizations under I.R.C. §509(a)(3).

These changes were made by way of amendments to I.R.C. §408(d)(8)(F). Interestingly, a taxpayer's QCD will be considered as part of the taxpayer's RMD for the calendar year.

- With respect to the charitable rollover provisions of §408(d)(8), the following clarifications are made in the Notice 2007-7:
- The limit is $100,000, regardless of how many IRAs the owner has and regardless of whether the taxpayer is married filing a joint return. If both a husband and wife each have IRAs, they each have a $100,000 limit.

- The rollover must be directly to a charity described at §170(b)(1)(A) and may not be to a supporting organization described at §509(a)(3) or a donor advised fund described at §4966(d)(2).

- Although a direct rollover may not occur from a simple IRA or a SEPP IRA, the Notice permits the direct rollover from such an arrangement if it is not an "ongoing Simple or SEPP." An ongoing Simple or SEPP is one for which an employer made a contribution for the plan year ending with or within the account holder's taxable year in which the charitable contribution will be made.

- The Notice expands the charitable rollover to an f/b/o IRA. If the beneficiary of the f/b/o IRA is over 70½ years of age, such beneficiary may complete a charitable rollover.

- The charitable rollover is not subject to withholding and the custodian may rely upon "reasonable representations" made by the IRA owner.

- The charitable rollover may be made by a check payable from the IRA custodian to the charitable organization even though the check is delivered by the IRA owner.

- The charitable rollover will not be considered a prohibited transaction under IRC §4975 because, for prohibited transaction purposes, the distribution is treated as having been received by the account holder. Thus, it appears that a charitable pledge may be satisfied through the charitable rollover.

- Under the 2010 Tax Relief Act, there is a special rule for QCDs made in January of 2011. These QCDs may be treated as if made on December 31, 2010 (so as to count towards a 2010 $100,000 limitation) and so as to satisfy the taxpayer's RMD for 2010.

Charitable Trusts. Charitable trusts are arrangements under which tax-exempt organizations ("Charities") and individual heirs share the economic benefits of a trust in successive fashion. A Charitable Remainder Trust ("CRT") is a trust under which the individual beneficiary or beneficiaries receive payments for some specified time period; and, at the end of the specified period, the remaining trust principal is distributed to Charities. For example, a CRT may be designed to provide benefits for a spouse during his or her lifetime; and, upon his or her death, pass to Charities. There are two types of CRTs:

- A charitable remainder annuity trust or "CRAT" is an arrangement in which a fixed dollar amount is distributed from the trust to the individual beneficiary each year.

- A charitable remainder unitrust or "CRUT" is a trust which pays the individual beneficiary a fixed percentage (at least 5% but no more than 50%) of each year's opening value of the trust. This type of distribution is a "unitrust distribution". Because CRUTs tend to be more flexible and provide some inflationary protection to the individual beneficiaries, they are more common than CRATs.

CRTs must comply with rigorous rules under IRC §664 CRTs, if so qualified, are exempt from income tax. Thus, IRA distributions to a CRT may be exempt from income tax.

However, as will be discussed below, what is known as the unrelated business taxable income or "UBTI" rules apply to CRTs.

The second type of charitable trust is known as a charitable lead trust or "CLT". Under this arrangement, the charity is provided with an annuity or unitrust distribution for a period of time; and, at the end of such period, the balance of the trust is distributed to or in trust for individual beneficiaries. Unlike CRTs, however, CLTs are not exempt from income taxes. Thus, a CLT would have to pay income tax on amounts it receives from an IRA. Because of this, creating a CLT as beneficiary of your IRA will likely not be advantageous. Therefore, the balance of this discussion will focus on CRTs.

Here is how the RMD rules work with a CRT:

- RMDs While Account Holder is Alive. While the account holder is living, RMDs will be computed under the "Uniform Lifetime" table of the regulations.

  The key planning move that would change the RMD calculation would be the conversion of all or a part of the IRA to a Roth IRA. After 2009, a taxpayer will be able to convert all or any portion of an IRA to a Roth IRA as there will no longer be a prohibition on individuals with adjusted gross income of more than $100,000 making such a conversion. The portion of the IRA converted to a Roth IRA will no longer be subject to RMD rules while the account holder is living. Moreover, if the spouse is beneficiary of the Roth IRA, there will be no RMDs during his or her lifetime as well. Any portion of an IRA which is converted to a Roth would likely be better left to the account holder's spouse and ultimately to children as opposed to a CRT.

- RMDs Following Death. Following the account holder's death, RMDs to the CRT will be computed as follows: The first RMD will be determined using a divisor equal to the account holder's life expectancy under Treasury tables based on his/her actual age at death. For example, if the account holder passed away at age 77, the initial divisor would be 12.1. Each year thereafter, the divisor would be reduced by 1. This creates a relatively fast distribution from the IRA to the CRT. If the account holder dies before the required beginning date, the CRT must take distribution under the five (5) year rule.

  However, if the CRT is tax-exempt, the CRT does not pay income tax on these distributions. Moreover, the CRT may reinvest these proceeds. Earnings on the reinvestments, likewise, are tax-free to the CRT assuming it is tax-exempt.

  Although the CRT itself may be tax-exempt, distributions from the CRT to the individual beneficiary are not. Instead, distributions to the individual beneficiary are classified as income to the individual beneficiary according to what is known as the "four-tier system". Essentially, as amounts are received by the CRT tax-free, the CRT must, nonetheless, keep a running total of the amount of different types of income it has received (i.e., ordinary income, capital gain, tax exempt income or principal). Funds received by a CRT from a decedent's IRA are allocated to the ordinary income running total.

When the individual beneficiary of the CRT receives his or her annual distribution from the CRT, the taxation of such distribution is determined according to a priority in the four-tier system. Not surprisingly, until the CRT's ordinary income tier is completely distributed by way of annual distributions to the individual beneficiary, such distributions are ordinary income to the individual beneficiary. For example, if an account holder creates a CRT and designated it as beneficiary of all or part of the IRA and such CRT is structured so that his or her spouse is the individual beneficiary, (i) distributions from the IRA to the CRT may be exempt from income tax and (ii) distributions to the spouse from the CRT will be taxed to his/her as ordinary income.

A CRT in which the spouse is the sole individual beneficiary will qualify for the estate tax marital deduction and the Charity's interest in the CRT will qualify for the charitable estate tax deduction. Thus, if the CRT is structured this way, there will be no estate tax on the CRT. Under the Internal Revenue Code, the foregoing treatment is only permitted if the spouse is the sole individual beneficiary of the CRT.

As mentioned at the beginning of this discussion, CRTs are subject to the Tax Code's UBTI rules. Under Prop. Reg. 1.664-1, a CRT with UBTI no longer loses its tax exempt status, but an excise tax is imposed and is equal to the full amount of the UBTI. This, of course, would cause a loss of a key benefit of naming a CRT as beneficiary of the IRA. Although most commentators believe that IRA distributions to a CRT should not be treated as UBTI, this issue has not been conclusively resolved. In PLR 200230018, the IRS ruled that a payment from an IRA directly to a charity did not constitute UBTI. If an account holder were to proceed with a CRT to be beneficiary of all or a portion of an IRA, it may be wise to get a private letter ruling from the Internal Revenue Service concerning this key issue.

If a charity is a beneficiary of an IRA or retirement then as long as the charity is a qualified recipient under I.R.C. §2055, the estate will be entitled to a charitable deduction.

On a couple of occasions, the IRS has allowed the personal representative of an estate to allocate IRAs in non-pro rata distributions to charitable beneficiaries. In other words, the estate was designated as beneficiary of the IRA and there were charitable gifts under the decedent's Will. The Service permitted allocation of the IRAs to the charitable beneficiaries without causing income to the estate under IRC §691. LR 20052004, LR 200633009 and 200826028.

- LR 200644020 illustrates the importance of form over substance when it comes to gifts to charities of an IRA. In this ruling, a revocable living trust was designated beneficiary of the decedent's IRA. The dispositive provisions of the trust called for a $100,000 distribution "in cash or in kind" to charities. The residue of the trust was to be distributed to the decedent's children. ***There was no specific direction that IRA proceeds payable to the trust be used to satisfy this pecuniary charitable bequest.***

  The trustee directed the IRA custodian to create f/b/o IRAs for each of the charities to satisfy the $100,000 charitable bequest.

  Here is how the IRS analyzed this situation:

- The IRA was IRD under IRC §691 and its allocation to the charities was not specifically required by the trust, therefore, the allocation to the charities constitutes a sale, exchange or other disposition under IRC §691(a)(2).

- As a result, the trust has income of $100,000. However, because the trust did not require that its income be set aside for charitable purposes, no ***income tax charitable deduction*** is available under IRC §642(c)(1).

The foregoing result is premised on the old *Kenan v. Comm'r*, 25 AFTR 607 (2d Circ. 1940) case. Stated another way, this result is premised on the fact that the charitable bequest under the trust was ***pecuniary*** and not ***fractional***.

One could argue that the IRS reads IRC §691(a)(2) too narrowly and that the trustee's general power to make distributions in cash, in kind or both would put the charities in a position of an entity acquiring the IRA pursuant to said entity's right to receive such amount. This is a dangerous precipice to stand on. There are ways to avoid the results of this ruling:

- The easiest (and best) way to avoid the result of the ruling is to directly designate the charity as beneficiary of a fraction of the IRA. If the decedent has a dollar amount in mind, say $100,000, the safest approach in the IRA beneficiary designation would be as follows: "That portion of my IRA determined with reference to a fraction, the numerator of which is $100,000 and the denominator of which is the date of death value of my IRA". This method will also satisfy the requirements for separate IRA treatment with regard to the non-charitable portion of the IRA.

- If the planner wishes to have the IRA payable to a living trust (or estate) and thereafter divided among charitable and non-charitable beneficiaries, care should be taken to either set up the charitable bequest as a fractional gift or make it a pecuniary gift with the direction that it be satisfied first with IRAs. *See* LR 200608032. Even if the planner takes one of these alternate approaches, running the IRA through a trust or estate involves additional issues with regard to DNI, the trust's treatment as a qualified trust and identification of beneficiaries for RMD purposes.

- If the charity had been a residual beneficiary, then, under IRC §691, there would be no acceleration when the f/b/o IRA is allocated to it. LR 200652028.

The foregoing discussing concerning charitable gifts applies to any form of pecuniary gift that might be satisfied with an IRA. However, it is interesting to note that LR 200705032 allowed an IRA to be allocated to a surviving spouse to satisfy a pecuniary marital bequest and, thereafter, the surviving spouse completed an "indirect rollover."

- LR 201013033. In this case, the decedent did not name a beneficiary of the IRA. Under the custodial account, the decedent's estate became the beneficiary. The decedent's estate was to "pour over" to a living trust. The living trust provided that a charity receive

a percentage of the trust. The estate proposed transferring the IRA to the trust followed by a transfer of the IRA by the trust to the charity in satisfaction of its fractional gift. The IRS concluded that this transfer did not accelerate or cause taxation of the IRA income to the trust because the charity was a specific residuary legatee within the meaning of Reg. 1.691(a)-4(b)(2).

- LR 200845029. Under this private letter ruling, a defined benefit plan was payable to an estate. A charity was a residual beneficiary of the estate. The estate proposed to assign its right to the defined benefit plan to the charity.

  The IRS ruled that under 691(a)(2) an item of IRD may be transferred without accelerating income tax to the person entitled to such item. The charity's position as residual beneficiary entitled it to the item of IRD so that the transfer by the estate did not accelerate income tax.

(5) Estate Tax Allocation Issue

Let's assume the decedent had a §401(k) plan account and an IRA. Also assume that under the decedent's estate plan, he did the following: (i) by beneficiary designations, left the retirement plan and IRA ("Retirement Benefits") to Child A and (ii) by Will and/or other dispositive documents, all other assets to Child B. Let's also assume that decedent's Will either says nothing about estate tax apportionment or invokes RCW 83.110A. Let's assume that Child B is the personal representative of the estate and Child A has no assets other than the inherited Retirement Benefits.

As an initial matter, there is no federal estate tax apportionment with respect to Retirement Benefits. In fact, the federal estate tax apportionment applicable to life insurance proceeds does not apply to annuities.

Under RCW 83.110A.030, the estate taxes attributable to the IRA are apportioned to Child A. Assuming Child A is a deadbeat, RCW 6.15.020 prevents attachment of the IRA and IRC §401(a)(13) (and its ERISA counterpart) prevent attachment of the §401(k) plan account.

This means that Child B, as personal representative, would be required to pay the taxes him or herself as required by RCW 83.110A.080 and, based on this payment, have a right of reimbursement under RCW 83.110A.090. I suppose this would allow Child B to attach RMDs and other distributions as taken by Child A.

Let's assume that, instead of the Retirement Benefits being paid to Child A in our example, the Retirement Benefits are, instead, payable to a trust of which Child A is the beneficiary. In this case, RCW 83.110A.030 does require some apportionment to the principal of the trust. However, the "person" responsible to pay the taxes so apportioned would be the trust itself and the trustee could assert the protection of ERISA and RCW 6.15.020. In short, I think the result would be the same.

It should be noted that IRC and ERISA protection for the §401(k) plan is subject to a federal tax levy. Thus, it is possible with the Retirement Benefits that, if the taxes were not paid, Child B could face transferee liability and a levy could be imposed upon the §401(k) plan

account and, perhaps, under some notion of federal preemption, the IRA. I am not sure if this would actually happen as Washington's estate tax apportionment provisions seem to require that Child B pay the tax and seek reimbursement from Child A.

§13.4 GIFT TAX

When completing a beneficiary designation or electing a form of payout on behalf of the working spouse, the planner must also consider the federal gift tax implications. Prior to the 1986 Act, I.R.C. §2517(a) provided that the exercise or nonexercise by an employee of an election or option whereby plan benefits would become payable to any beneficiary after the employee's death would not be considered a gift. Former I.R.C. §2517(c) provided that a transfer of retirement benefits to a designated beneficiary would not be treated as a gift of the nonworking spouse's community one-half interest by the nonworking spouse. The 1986 Act repealed I.R.C. §2517. If the nonworking spouse waives, before the death of the participant, any survivor benefit or right to such survivor benefit under I.R.C. §401(a)(11) or I.R.C. §417, the waiver is not to be treated as a transfer of property by gift. Under I.R.C. §2523(f)(6), the acceptance of a qualified joint and survivor annuity form of payment by the nonworking spouse will be treated as a gift from the working spouse. That gift will qualify for a marital deduction unless the working spouse elects otherwise.

§13.5 SPOUSAL PROTECTION UNDER ERISA

I.R.C. §§401(a)(11) & 417 and ERISA provide safeguards for the nonworking spouse's interest in the working spouse's qualified retirement plan benefits. Generally, distributions from a qualified plan that begin during a participant's life must be in the form of a single life annuity with respect to a single participant, or a qualified joint and survivor annuity with respect to a married participant. I.R.C. §401(a)(11)(A)(i). A qualified joint and survivor annuity is an annuity payable over the joint lives of the working and nonworking spouse with payments to the nonworking spouse being equal to one-half of those made to the working spouse. I.R.C. §417(b)(1). For example, if the working spouse's lifetime payments were $300 per month, the nonworking spouse's monthly payments must be $150 after the death of the working spouse.

If a married participant dies before distributions from a retirement plan have begun, the participant's spouse is entitled to a preretirement survivor annuity. I.R.C. §401(a)(11)(A)(ii). In the defined benefit plan context, a preretirement survivor annuity equals what the surviving spouse's benefits would have been under the survivor portion of a qualified joint and survivor annuity. I.R.C. §417(c)(1). Under a defined contribution plan, the surviving spouse is entitled to an annuity payable over the nonworking spouse's lifetime from one-half of the deceased participant's account balance. I.R.C. §417(c)(1).

Profit sharing plans (i.e., §401(k) plans) receive a limited exemption from the annuity requirements. This exemption is available only if the plan provides that upon his or her death, the participant's benefit is payable in full to the participant's surviving spouse, and the participant does not elect payment of benefits in the form of a life annuity. I.R.C. §401(a)(11)(B)(iii). The annuity requirements, however, attach to any profit sharing account that represents benefits formerly held by a plan that were subject to the annuity requirements. *Id.* Importantly, the annuity requirements do not apply to IRAs.

In short, there are valuable federal property rights for the spouse of a participant. In the case of a typical money purchase pension plan or other plan fully subject to the annuity rules, the spousal protection applies to any distributions made during the participant's lifetime and at the participant's death. In the case of a plan not subject to the annuity requirements (i.e., a profit sharing or §401(k) plan), the surviving spouse must be the sole beneficiary of the participant's account, unless the spouse consents otherwise. Essentially, under the annuity requirements, the spouse is given a one-half interest in the plan. Under the profit sharing plan exception, the spouse has no rights during the participant's lifetime (other than those provided under community property laws) but is entitled to be the sole beneficiary at the participant's death. A plan subject to the spousal annuity rules may require the participant and spouse to be married one year before the spousal annuity rules apply to the participant's account. These rights may only be waived in accordance with the terms of the applicable plan document.

Of course, the spousal rights of the Retirement Equity Act of 1984 (REA), Pub. L. 98-397, 98 Stat. 1426 (1984), can create problems in the area of prenuptial agreements. In this context, the practitioner must differentiate between the divorce and the death setting. In *Critchell v. Critchell*, 746 A.2d 282 (D.C. 2000), the court held that a future spouse's waiver of claims against a retirement plan benefit may be upheld in a divorce setting but will not be valid at the participant's death. *See also Hurwitz v. Sher*, 982 F.2d 778 (2d Cir. 1992), *cert. denied*, 508 U.S. 912 (1993); Treas. Reg. §1.401(a)-20, Q-28, A-28. In the case of *Ford Motor Co. v. Ross*, 129 F. Supp. 1070 (2001), the issue was a prenuptial agreement under which the future spouse waived all interest in retirement benefits. After marriage, the spouse never signed the proper consents and waivers required by REA. The participant died and the spouse claimed her ERISA protected benefits. Citing *Boggs v. Boggs*, 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1996), the court held that ERISA preempted the prenuptial agreement. Moreover, the court rejected an attempt by the decedent's children to impose a constructive trust on the benefits, as such a constructive trust would frustrate the ERISA spousal annuity rights. The Fourth Circuit Court of Appeals confirmed that a prenuptial agreement does not satisfy the requirements of REA. *Hagwood v. Newton*, 282 F.3d 285 (2002). In that case, the spouse had executed a prenuptial agreement but not the required REA waivers. Thus, on the death of the working spouse, the nonworking spouse was entitled to the benefits purportedly waived by the prenuptial agreement. Interestingly, the court, in dicta, stated that while the working spouse was still alive, he possibly could have compelled execution of the REA waivers as required by the prenuptial agreement. *See also Manning v. Hayes*, 212 F.3d 866, 870 (5th Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

In *Hamilton v. Washington State Plumbing & Pipefitting Industry Pension Plan* (2006, CA 9) 2006 WL 44305, the participant divorced his first wife, Linda, in 1996. The dissolution decree required that the participant name his children as beneficiaries of his pension. After the divorce, the participant married his second wife, Mary. The participant died in 2002. Under the terms of the plan, Mary was to receive the entire benefit in the event of death before retirement. She asserted this right under the terms of the plan. The children asserted that the 1996 marital dissolution order was a QDRO and that they should receive the benefits. The Ninth Circuit determined that the prior order was a QDRO. However, the Ninth Circuit also found that the plan spousal rights were based on ERISA §205(a)(2) and superseded the QDRO.

In the context of a prenuptial agreement in Washington state, the practitioner may wish to consider (i) delineating what benefits will be considered community versus separate, (ii) including a waiver by the future spouse of the participant's separate property retirement benefits in the context of a divorce, and (iii) requiring the future spouse to sign appropriate REA documents to waive spousal death benefit rights and tying the waivers to some type of economic sanction. Of course, the participant should be counseled that the provision in the agreement requiring the future spouse to execute REA waivers may not be enforceable, and perhaps the penalty for failure to waive the REA rights may likewise be unenforceable.

Private Letter Ruling 2002-15-061 (Jan. 16, 2002) permitted a postnuptial agreement setting out the division of an IRA in the event of divorce. Importantly, there was no division or distribution pursuant to the agreement unless and until divorce.

> DAVENPORT V. DAVENPORT, 146 F. Supp. 2d 770 (M.D.N.C. 2001). In *Davenport*, the participant and his spouse had been married seven years. The participant had a sizeable account balance under a profit sharing plan. Prior to the participant's death, the couple separated and began the dissolution process. During this time, the participant executed a new will, leaving his entire estate to his four children. The participant did not change the beneficiary designation on his profit sharing plan. As noted above, ERISA would have required the spouse to consent to such a change. The participant committed suicide, the surviving spouse applied to the plan administrator for benefits, and the plan administrator brought an action in equity to have the benefits paid to the participant's estate. The Unites States District Court held that because the participant's spouse was the designated beneficiary and the participant had not named another beneficiary (nor had the spouse consented to designation of another beneficiary), she was entitled to the plan benefits.

Owens v. Automotive Machinists Pension Trust 2007 U.S. Dist. LEXIS 7797 (W.D. Wash. 2007). This is a fascinating case arising in Washington State. Under evolving case law in Washington State, non-spouse cohabitants can accrue community-like property which can be divided in divorce and handled at death in the same manner as community property. This case involved a couple who lived together for over 30 years and had two children together. The court found that the pension was "community-like property" and issued a qualified domestic relations order or "QDRO" requiring payment of a portion of the pension to the other cohabitant. The trustees of the plan refused to recognize the Order on the basis that the couple were never legally married and that to be a QDRO, the Order must relate to child support, alimony or marital property rights. Also, the trustees objected on the basis that the alternate payee was not a spouse, former spouse or child of the participant. The court held that the community-like property was a "marital property right" under ERISA and could, therefore, be subject to a QDRO.

A 2007 Court of Appeals case dealt with a spousal waiver to a retirement plan account contained in a prenuptial agreement. In this case, the account holder spouse committed suicide after marriage, but before he had completed a beneficiary designation and obtained his new wife's waiver of ERISA's spousal protection. The prenuptial agreement clearly provided that the wife had waived any rights under the plan. Both the United States District Court and Court of Appeals found that (i) the waiver contained in the prenuptial agreement was not worth the paper

it was written on as it did not satisfy ERISA's spousal consent requirements (most notably that the consent be obtained after marriage in the form provided by the plan) and (ii) the wife was not in breach of the agreement as she had not been asked to sign a waiver and consent while the husband was living. *Greenbaum Dahl & McDonald PLLC v. Sandler*, 2007 U.S. App. LEXIS 28823 (6th Cir. 2007).

- Carmona v. Carmona, (September 17, 2008 U.S.C.A. 9). This is a fascinating case. Mr. Carmona retired and commenced taking a joint and survivor annuity from a pension plan. The annuity provided for a payment of a certain amount to Mr. Carmona during his lifetime with payments to continue to his then wife ("wife one") following Mr. Carmona's death.

  Mr. Carmona and wife one divorced. The divorce decree awarded Mr. Carmona his entire interest in the defined benefit plan.

  Mr. Carmona later remarried ("wife two"). When he attempted to convince the pension plan administrator to change the survivor beneficiary to wife two, the plan administrator refused.

  The United States Court of Appeals held that wife one will continue as the survivor beneficiary of the pension plan payment. The Court reasoned that she never waived her right to survivorship benefits at the time payment began. The state divorce court's later order is therefore preempted by ERISA.

The Ninth Circuit Court of Appeals recently ruled that the spousal protection of ERISA does not transfer from a §401(k) plan to an IRA. In this case, the decedent took distribution of a §401(k) plan and rolled it into an IRA. The decedent designated his four adult children as the IRA's beneficiaries. Following the decedent's death, the surviving spouse asserted that ERISA's protections should apply to the IRA because it emanated from a §401(k) plan. The lower court granted summary judgment in favor of the decedent's children and this was upheld by the Court of Appeals. This decision is correct because ERISA does not provide the surviving spouse death benefit protection until the death of the spouse. At that time, the plan in question must be an ERISA plan for the protection to apply. *Charles Schwab & Co. v. Chandler*, 105 AFTR 2d, 2010-690.

§13.6 COMMUNITY PROPERTY

Retirement plan benefits are generally considered to accrue from day to day and year to year until they finally ripen into vested and matured interests. In community property states the benefits that accrue during marriage are community property. The courts treat such benefits as if the benefits had been purchased by the employee out of earnings. Thus, such property is owned in separate and community proportions according to the character of the hypothetical earnings used to make the "payments." Harry M. Cross, *The Community Property Law in Washington* (rev. 1985), 61 WASH. L. REV. 13, 29 (1986)

Although IRAs may be classified as community property for state law purposes, I.R.C. §408(g) requires that the income tax rules governing IRA distributions be applied without regard

to community property law. This requirement can create traps for the unwary. In *Bunney v. Commissioner*, 114 T.C. No. 17 (2000), the husband, in the process of a divorce, had a portion of his IRA distributed to the wife. The I.R.S. asserted that the sole means to divide an IRA in a divorce is through I.R.C. §408(d), which requires a direct transfer from one spouse's IRA to the divorcing spouse's IRA. Moreover, the I.R.S. asserted that because the husband was the account holder, the husband was liable for income tax and a 10 percent penalty under I.R.C. §72 relative to the IRA distribution to his ex-wife. The husband argued that the wife should be considered the distributee for income tax purposes because she was receiving her community property interest in the IRA. The Tax Court agreed with the I.R.S. and taxed the husband.

In *Morris v. Commissioner*, 83 T.C.M. (CCH) 1104 (2002), the Tax Court again ignored community property laws by refusing to allow the I.R.S. to proceed against the non-account-holder spouse with an income tax deficiency resulting from the account holder spouse's withdrawals from a community property IRA.

Tax-qualified retirement plan benefits may be awarded to a former spouse or children pursuant to a qualified domestic relations order under I.R.C. §414(p). I.R.C. §402 specifically provides that the income tax associated with a distribution to the ex-spouse under such an order is allocated to the ex-spouse. What catches practitioners by surprise, however, is that distributions pursuant to a qualified domestic relations order to anyone *other than* the ex-spouse (i.e., children of the couple or death beneficiary of the ex-spouse) are fully taxable to the participant.

As discussed below, the community property interest of the decedent nonworking spouse in a tax-qualified retirement plan essentially disappears in the event that the nonworking spouse predeceases the working spouse.

There have been other clashes between ERISA and state laws. The Washington Supreme Court held that a statute revoking beneficiary designations upon divorce (RCW 11.07.010) would apply to a §401(k) plan beneficiary designation. *In re Estate of Egelhoff*, 139 Wn.2d 557 (1998). However, the United States Supreme Court reversed this decision, stating that the Washington statute is preempted by ERISA in the case of a §401(k) plan. *Egelhoff v. Egelhoff*, 532 U.S. 141, 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001). The United States Supreme Court reversal calls into question another Washington case. In *In re Estate of Gardner*, 103 Wn. App. 557, 13 P.3d 655 (2000), the court reviewed a divorce decree under which the spouses divided their property and waived all claims against each other. The husband died before changing the beneficiary designation on his TIAA-CREF plan. To complicate matters, the husband had remarried prior to his death. The plan administrator took the position that the second spouse was entitled to her 50 percent interest under ERISA and the remaining 50 percent should pass to the first spouse as per the beneficiary designation. The Washington Court of Appeals, citing *Egelhoff* and RCW 11.07.010(2)(a), held that divorce revoked the beneficiary designation and held that the second spouse was to receive all of the benefits (50 percent under ERISA and 50 percent in recognition of her community property).

The Texas Supreme Court has also not agreed with the *Egelhoff* result. In *Keen v. Weaver*, 121 S.W.3d 721 (Tex.), *cert. denied*, 488 U.S. 1006 (2003), the plan participant and wife were divorced, but the participant died without changing the beneficiary designation for

plan benefits, leaving his former wife as the primary beneficiary and his mother as the contingent beneficiary. Texas had a "redesignation" statute similar to that at issue in the *Egelhoff* decision. The Texas Supreme Court stated that although ERISA preempts the Texas redesignation statute, federal common law principles would recognize the former spouse's voluntary and knowing waiver of the plan's benefits. Not surprisingly, this was a five/four decision with the dissenters believing that the former spouse should receive the benefits.

In yet another case indicating a strong trend in favor of ERISA preemption, the Fifth Circuit Court of Appeals stated that in a simultaneous death setting, payment of benefits is governed by ERISA, the plain meaning of the plan language, and beneficiary designation. *Tucker v. Shreveport Transit Mgmt, Inc.*, 226 F.3d 394 (5th Cir. 2000). In this case, the court refused to take into consideration a "simultaneous death" provision in the decedent's will as well as Louisiana's statute concerning presumed survivorship.

In a postnuptial agreement, husband and wife agreed to disposition of husband's IRA in the event of a divorce. The IRA was not currently segregated or divided in any way. The I.R.S. concluded that this arrangement did not cause any form of deemed distribution or a prohibited transaction within the meaning of I.R.C. §4975(c). Priv. Ltr. Rul. 2002-15-061 (Jan. 16, 2002).

If the nonworking spouse has a community property interest in the working spouse's accounts, consideration must be given to planning for the disposition of his or her interest. Unfortunately, the extent to which the nonworking spouse may control the disposition of the interest is unclear. Most community property states regard the nonworking spouse as having a community property interest in the working spouse's retirement plans to the extent the benefits accrued during marriage. The same is true of IRAs. The community property states that have addressed the issue allow the nonworking spouse to dispose of that interest by will if he or she predeceases the working spouse. *In re Estate of Mundell,* 124 Idaho 152, 857 P.2d 631 (1993); *In re Estate of MacDonald,* 51 Cal. 3d 262, 794 P.2d 911 (1990); *Allard v. Frech,* 754 S.W.2d 111 (Tex. 1988), *cert. denied,* 488 U.S. 1006 (1989); *Farver v. Dep't of Retirement Sys.,* 97 Wn.2d 344, 644 P.2d 1149 (1982).

Although the state courts have generally recognized that the nonworking spouse has a community property interest in the portion of a qualified plan that accrues during marriage, the United States Supreme Court has held that the anti-alienation provisions of ERISA prevent the nonworking spouse from disposing of his or her interest with respect to qualified plans. In *Boggs v. Boggs,* 520 U.S. 833, 117 S. Ct. 1754, 138 L. Ed. 2d 45 (1996), the Supreme Court essentially followed the logic of and came to the same conclusion as the Ninth Circuit Court of Appeals in *Ablamis v. Roper,* 937 F.2d 1450 (9th Cir. 1991). Thus, although the nonworking spouse may have a community property interest in a retirement plan during his or her nonworking spouse's lifetime, that interest is inaccessible following his or her death. Like the *Ablamis* decision, the *Boggs* decision significantly impacts planning in a community property jurisdiction. For example, if the couple wishes to have the entire community property of the first spouse to die pass into trusts for the benefit of the surviving spouse, that wish could be carried out relative to the retirement plan if the working spouse dies first. However, if the nonworking spouse dies first, the working spouse could assert the *Boggs* decision to prevent the deceased nonworking spouse's interest from being awarded to a trust under the deceased nonworking spouse's will. In such a case, could the estate of the nonworking spouse obtain some sort of "charging order" against the

surviving working spouse's interest in the couple's community property? Or, would such a charging order likewise be preempted by ERISA and the *Boggs* decision?

A charging order would likely be unobtainable. The *Boggs* decision denied both access to the retirement plan benefits and an "accounting" from other assets. Moreover, the United States Supreme Court, in *Yiatchos v. Yiatchos,* 376 U.S. 306, 84 S. Ct. 742, 11 L. Ed. 2d 724 (1964), held that relative to United States Savings Bonds, federal law prevails over inconsistent state law. In *Yiatchos,* the heirs attempted to preclude a surviving joint tenant from taking United States Savings Bonds and, in the alternative, argued for a charging order against other assets. The Supreme Court made quick work of both arguments and stated that awarding the joint tenancy assets to the co-owner but requiring the co-owner to account for one-half of the value of those assets would render the federal law and award of title meaningless.

The *Boggs* decision could prevent the nonworking spouse from making full use of his or her unified credit. In particular, the rule may prevent a nonworking spouse who owns few assets (other than a retirement plan account) from sheltering enough other assets from inclusion in the estate of the working spouse. As a result, the estate of the surviving spouse may be required to pay a larger estate tax than otherwise. A planning approach might be an agreement prior to death for a division of the former community property on an "aggregate" approach. The same result could be obtained after death in states permitting non-pro rata divisions of the former community property. Query: Would the I.R.S. use the *Boggs* rule to assert that such a division results in a gift by the surviving working spouse?

Existing law appears to recognize that the nonworking spouse has much more control over the disposition of his or her community property interest in an IRA. *See* RCW 6.15.020. This statute states that the nonworking spouse's community property interest in the working spouse's IRA may pass under the nonworking spouse's will. How the interest would actually be disposed of to someone other than the working spouse is a difficult question.

In Private Letter Ruling 94-39-020 (July 7, 1994), the I.R.S. held that an IRA can be partitioned (within one IRA account) into equally owned units without adverse tax effects. It held that the partition of a community property IRA into separate equal shares owned and subject to disposition by each spouse (but held within the working spouse's IRA) was not a taxable event and did not constitute a transfer or distribution for purposes of I.R.C. §408(d)(1). In such a case the nonworking spouse could dispose of his or her interest in the IRA in a way that shelters it from inclusion in the working spouse's estate. This possibility should be explored in connection with planning for large estates. The Service also held that such a partition did not involve any gift by either spouse. It should be noted that an actual transfer of one spouse's IRA into an IRA in the name of the other spouse is, absent a divorce, a taxable distribution to the account holder spouse. *See Rodoni v. Commissioner,* 105 T.C. 29 (1995).

In an earlier Private Letter Ruling, the I.R.S. held that a predeceasing spouse may dispose of his or her community property interest in an IRA. Priv. Ltr. Rul. 80-40-101 (July 15, 1980). In this ruling the I.R.S. allowed the nonworking spouse's community property interest in the working spouse's rollover IRA to be distributed pursuant to the will of the nonworking spouse. It further determined that the distribution would not be taxed to the surviving working spouse. Rather, the benefits were taxable to the individuals who received them. The I.R.S. also

concluded that the custodian of the IRA could recognize the probate court's order to distribute to the beneficiaries of the nonworking spouse's will. The above result may no longer be valid after the Tax Court's decisions in *Bunney* and *Morris*.

In light of Private Letter Rulings 1999 -25-033 (June 25, 1999) and 1999-12-040 (Dec. 29, 1998), the disclaimer approach may be the best option for "funding" the credit shelter trust upon the death of the nonworking spouse. Preparation for such funding would be as follows: (1) the surviving spouse should be named as sole personal representative of the will and given broad non-pro rata division and distribution powers, (2) the will should specifically provide that the deceased spouse's interest in the surviving spouse's IRA will pass to the surviving spouse, but if the surviving spouse disclaims, the disclaimed interest will pass to the estate, and (3) the will should provide that, to the extent possible, the decedent's interest in the surviving spouse's IRA will be allocated to the surviving spouse in any non-pro rata distribution. After death, the amount necessary to fully fund the credit shelter trust could be disclaimed and then allocated back to the surviving spouse in a non-pro rata distribution in exchange for the surviving spouse's community interest in non-IRA assets. If the I.R.S. does not change the approach it took under the above Private Letter Rulings, it is likely that the non-pro rata distribution will not accelerate income. Moreover, it appears that the I.R.S. does not take issue with the non-pro rata distribution by the surviving spouse in his or her capacity as personal representative following a disclaimer by the surviving spouse in his or her capacity as an heir of the estate. *See* Priv. Ltr. Rul. 97-07-008 (Nov. 12, 1996).

§13.7 CREDITORS' CLAIMS

Both retirement plan assets and IRAs enjoy creditor protection for citizens of Washington state. Retirement plans are protected by federal law. *Patterson v. Schumate,* 504 U.S. 753, 112 S. Ct. 932, 117 L. Ed. 2d 104 (1992); *Barkley v. Conner (In re Conner),* 73 F.3d 258 (9th Cir.), *cert. denied*, 519 U.S. 817 (1996). IRAs enjoy creditor protection only as provided by state law. *See* RCW 6.15.020. Recently, the Sixth Circuit ruled that a Michigan statute similar to RCW 6.15.020, which purported to protect IRAs from creditors' claims, was preempted by ERISA. The court reasoned that because ERISA did not extend creditor protection to IRAs, a state's attempt to do so would be preempted. This is an odd and troubling case. *Lampkins v. Golden*, 28 Fed. Appx. 409 (2002). It should be noted that the *Lampkins* case involved a simplified employee pension plan (SEP IRA). Also, bankruptcy was not an issue. It should also be noted that in a bankruptcy case after *Lampkins*, Michigan's IRA exemption was upheld even though the trustee in bankruptcy argued that *Lampkins* should apply. *In re Tomlin*, 315 B.R. 439 (Bankr. E.D. Mich. 2004); *accord In re Rayl*, 299 B.R. 465 (Bankr. S.D. Ohio 2003); *In re Mitchell,* No. 02-13713, 2002 WL 31443051 (Bankr. N.D. Ohio 2002). The author believes that the *Lampkins* case is somewhat of an aberration and that state statutes exempting IRAs from creditors' claims should be upheld. *See also In re Moses*, 167 F.3d 470 (9th Cir. 1999).

It should be noted that ERISA protection does not apply if the retirement plan is sponsored by an employer and the only participants in the plan are the husband and wife who own the employer. *Gill v. Stern (In re Stern)*, 345 F.3d 1036 (9th Cir. 2003), *cert. denied*, 541 U.S. 936 (2004). In other words, the plan must have a participant other than the husband and wife who own the business. The time of this participation is measured at the time the creditor asserts the claim. *Id.* Interestingly, it appears that a debtor could transfer from a nonexempt

retirement plan to a fully exempt retirement plan without the transaction being considered a fraudulent conveyance under the bankruptcy rules. *Id.* Thus, for example, an owner of a business who is facing severe creditor trouble could either (i) hire an employee who immediately participates in the plan or (ii) the owner himself could take a job with another employer that has participant employees and transfer his benefits to that employer's plan.

> IN RE HAGEMAN, 260 B.R. 852 (Bankr. S.D. Ohio 2001). In *Hageman*, a spouse was awarded an interest in the participant's retirement plan. Before the interest was distributed, the spouse filed bankruptcy. The bankruptcy court held that the creditors' protection of ERISA (*see Patterson v. Shumate*, 504 U.S. 753, 112 S. Ct. 2242 119 L. Ed. 2d 519 (1992)) was inapplicable to rights segregated for a spouse under a qualified domestic relations order (QDRO). Moreover, the court held that the protection for benefits under Ohio state law likewise did not apply to the spouse's interest.

The BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, Pub. L. 109-8, 119 Stat. 23 (2005), was signed into law on April 20, 2005. There are key changes made to a debtor's ability to exempt IRAs and certain tax-qualified retirement plans in bankruptcy.

To understand the changes, it is helpful to review the prior bankruptcy scheme. The ability of a debtor to exempt assets from creditors' claims in a bankruptcy proceeding is governed by 11 U.S.C. §522. For ease of reference, we will refer to this statute in its pre-amendment form as the "prior law". Under the prior law, the debtor was permitted to elect either a list of federal exemptions or the exemptions provided by applicable state law. The debtor could not pick and choose from the two groups of exemptions. Of course, either way, qualified retirement plans governed by ERISA were exempt by virtue of ERISA. *Patterson v. Schumate*, 504 U.S. 753. However, as discussed above, it is possible for a qualified retirement plan to lack ERISA protection. With respect to a debtor's IRA (and a qualified plan not covered by ERISA), the decision to elect federal or state exemptions was critical. A debtor who elected the Washington state exemptions would rely on RCW 6.15.020, which exempts IRAs and many non-ERISA plans from creditors' claims. RCW 6.15.020. This exemption is unlimited. If federal exemptions were elected, the prior law stated as follows:

> A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age, or length of service, *to the extent reasonably necessary for the support of the debtor* and any dependent of the debtor . . . (Emphasis added.)

Former 11 U.S.C. §522(d).

Under the prior law, there was a question as to whether the federal exemption applied to IRAs at all. This issue was settled by the Supreme Court in *Rousey v. Jacoway,* ___ U.S. ___, 125 S. Ct. 1561, 161 L. Ed. 2d 563, 73 U.S.L.W. 4277 (2005) In the *Rousey* case, the debtor elected the federal exemptions. The Court held that the above quoted section of the prior law applies to IRAs, but only permitted the debtors to exempt that which was reasonably necessary

for their support. Had the *Rousey* bankruptcy occurred in the state of Washington and the state exemptions been elected, the debtor's entire IRA would have been exempt.

Section 224 of Pub. L. 109-8 substantially changes 11 U.S.C. §522 with respect to its treatment of IRAs and qualified plans not covered by ERISA. This "new law" includes the following provisions:

- If the debtor elects state exemptions, IRAs and qualified plans not covered by ERISA have exempt status unless applicable state law specifically states otherwise. Therefore, for a Washington resident electing the state exemptions, RCW 6.15.020 along with the new law will exempt the IRA subject only to a dollar limit that has a very narrow application, discussed below.

- If the debtor elects the federal list of exemptions under the new law, there is now a specific exemption for IRA and tax-qualified non-ERISA plans. This exemption is not subject to the "reasonably necessary for support" test of the prior law. 11 U.S.C.A. 522(d)(12). This exemption is also subject to a very narrowly worded limit, described below.

- The new law includes a limit for the dollar amount of an IRA that may be exempt. 11 U.S.C.A. 522(n). This dollar limit applies whether the debtor elects state or federal exemptions. Thus, this dollar limit theoretically could limit application of RCW 6.15.020 when a Washington resident has elected state exemptions. The limit is $1 million; however,

  1) Amounts in an IRA attributable to a rollover from a qualified plan are *not* taken into account in the $1 million limit. This means that the $1 million limit really only applies to traditional annual IRA contributions and earnings thereon.

  2) The $1 million exemption limit does not apply to a SEP (simplified employee pension) account or a SIMPLE retirement account. This makes sense as these are employer-sponsored IRAs similar to 401(k) plans.

Comment: The new law is good news for debtors. It is now clear that IRAs may be protected under both the federal and applicable state exemptions. Because the $1 million limit does not apply to rollover contributions, it is advisable to keep rollover IRAs separate from an IRA funded by annual contributions. The new law really does not affect the treatment of accounts in a tax-qualified retirement plan that is fully covered by ERISA. As mentioned above, ERISA provides the exemption for these accounts. However, the new law improves the protection for an account in a tax-qualified plan that is not covered by ERISA, such as the §401(k) plan in the *In Re Stern* case described above. Under the prior law, such an account was only protected if the debtor elected state exemptions and the state exemptions provided protection for such an account. Under the new law, as long as the arrangement is tax-qualified, the federal exemptions provide protection.

In the context of a bankrupt individual with an interest in a qualified retirement plan, the creditors may have the incentive to look for problems with plan language or administration leading to plan disqualification. The IRS has a program to retroactively correct qualification defects as "EPCRS" under Rev. Proc. 2008-50. A bankruptcy court should honor such a retroactive correction.

Another area of concern involves IRAs. Under IRC §408(e)(2), an IRA will lose its tax qualified status in the year a prohibited transaction under IRC §4975 occurs with respect to the IRA. In *In Re Ernst W. Willis*, 104 AFTR. 2d 2009-5195, the creditors asserted the existence of prohibited transactions with regard to the debtor's IRA in order to defeat creditor protection and obtain access to the IRA. There is no IRS correction program for IRA prohibited transactions. See the discussion below concerning inherited IRAs and creditor protection.

§13.8 INHERITED IRA

- **What is an inherited IRA?**

An inherited IRA is an IRA received by a beneficiary of a deceased account holder. As discussed below, the decedent may have left an IRA to said beneficiary or a retirement plan account to said beneficiary which retirement plan account is transferred to the inherited IRA by way of a "non-spouse rollover" under IRC §402(c)(11).

If the decedent's surviving spouse is the beneficiary of the decedent's IRA; then, until the surviving spouse completes a spousal rollover into an IRA in the name of the surviving spouse, the decedent's IRA is technically an inherited IRA with regard to the surviving spouse. However, once the surviving spouse rolls the decedent's IRA into an IRA in the surviving spouse's name, the surviving spouse becomes the account holder with respect to said IRA and said rollover IRA is not an inherited IRA.

- **How are inherited IRAs created?**

An inherited IRA may emanate from a decedent's IRA as follows: The account holder of an IRA dies designating a beneficiary of his or her IRA. Assuming the beneficiary is not the surviving spouse (so that there will be no spousal rollover), the IRA will now be registered in the decedent's name for the benefit of ("f/b/o") the non-spouse beneficiary. If the deceased account holder named several beneficiaries, the IRA may be divided in compliance with required minimum distribution ("RMD") rules into separate f/b/o accounts; each in the name of the decedent f/b/o a specified beneficiary.

<u>Example</u>:

Sally Smith dies in 2007 at age 72 with her three children designated as beneficiaries of her IRA. Sally's three children make sure that her 2007 RMD is taken before December 31, 2007. Sally's children thereafter direct the custodian of the IRA to divide Sally's IRA by way of direct IRA-to-IRA transfers into three new IRAs; each in the name of Sally, deceased f/b/o a specific child. Each of these three IRAs are inherited IRAs which will be treated as separate IRAs for RMD purposes under Reg. 1.401(a)(9)-8, QA2.

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Example:

Fred dies designating his wife, Sue, as beneficiary of his IRA. Sue is only 55 years of age and fears she may need distributions from Fred's IRA to live on. Sue is advised that distributions taken from an inherited IRA are exempt from the 10% penalty of Section 72(t) so she leaves the IRA registered in Fred's name f/b/o Sue. While the IRA is so registered, it is an inherited IRA with regard to Sue. After attaining age 59½ (when Sue would no longer be subject to the premature distribution penalty of IRC §72(t)), Sue rolls Fred's IRA into an IRA in Sue's name. Sue's rollover IRA is not an inherited IRA. It is a rollover IRA of which Sue is the account holder having all rights of an account holder (e.g., Sue can delay commencing RMDs until April 1 of the calendar year following the calendar year Sue attains age 70½, Sue may convert the IRA to a Roth IRA, Sue may designate beneficiaries whose life expectancies will be utilized for a stretch out distribution following Sue's death under the RMD rules).

The second way that an inherited IRA may be created is by way of a "non-spouse rollover" under IRC §402(c)(11). Under this new Code section, if the retirement plan so allows, a non-spouse beneficiary may direct the administrator of the decedent's retirement plan to transfer the decedent's account to an inherited IRA. This is different than the spousal rollover option. If an account holder in a retirement plan dies designating the spouse as beneficiary, the spouse has the right to take distribution of the decedent's account and roll it into an IRA in the spouse's name. Again, the spousal rollover IRA is not an inherited IRA. Rather, the spouse will be the account holder with respect to the IRA. Section 402(c)(11) allows a non-spouse beneficiary to have the decedent's account in a retirement plan transferred to an inherited IRA.

Example:

Bill dies in 2007 designating his daughter, Kate, as beneficiary of a §401(k) plan account. The plan in question permits a non-spouse rollover. Kate may direct the plan to make a direct plan-to-IRA transfer of Bill's account to an IRA in Bill's name, deceased f/b/o Kate (an inherited IRA). This direct transfer may occur in one of two ways. The funds could be directly transferred from the §401(k) plan account to the inherited IRA account. Or, a check in the name of the IRA custodian may be issued to Kate which Kate takes to the IRA custodian. However, the §401(k) plan may not issue the check in Kate's name. Section 402(c)(11)(A).

- **How are RMDs calculated from an inherited IRA?**

A discussion of the RMD rules can be found at Section 1.2(1), above. However, for purposes of this section, let's assume that there is one individual beneficiary or that the separate account rules of Reg. 1.401(a)(9)-8 have been complied with so that, for RMD purposes, each beneficiary would be treated separately. Finally, because special rules apply to a surviving spouse (a spousal rollover opportunity and the ability to delay RMDs) the following assume an individual non-spouse beneficiary. Initially, if the decedent was already beyond his or her required beginning date, the beneficiaries must make certain that the decedent's RMD for the year of death is made. Reg. 1.401(a)(9)-5, QA4. Unless the "five-year rule" (described below) applies, a non-spouse recipient of an inherited IRA must begin RMDs no later than the end of the calendar year following the account holder's death.

Example:

Betty dies in 2007 at age 75 after taking her 2007 RMD naming her daughter, Shirley, as beneficiary. Shirley's first RMD is due December 31, 2008 and will be computed with reference to the December 31, 2007 IRA account balance. For her 2008 RMD, Shirley will divide said account balance by her life expectancy under the single life table ("SLT") of Reg. 1.401(a)(9)-9, QA1 based on Shirley's attained age in 2008. This process repeats each calendar year by reducing Shirley's initial divisor by one. In short, the table is only consulted in the first year (2008) as the divisor, once established in 2008, reduces by one for each year thereafter. This method is known as a "stretch out".

If the account holder dies before his or her required beginning date, there is the possibility that the five-year rule may apply. This rule requires that the account be completely distributed by the end of the calendar year containing the fifth anniversary of the participant's death. Reg. 1.401(a)(9)-3A(b), QA2. Generally speaking, the five-year rule is not a concern where the decedent's account was in an IRA. However, it is not uncommon for retirement plans to employ the five-year rule. For example, a §401(k) plan might require that a non-spouse beneficiary receive complete distribution within five years of the decedent's death. The beneficiary may nonetheless escape the five-year rule, if (i) the plan permits a non-spouse rollover and (ii) the beneficiary completes the non-spouse rollover before the end of the calendar year following the calendar year of the participant's death. Notice 2007-7, QA17(c)(2) and IRS clarification by newsletter dated February 13, 2007.

Example:

Fred dies at age 60 leaving his §401(k) plan account to his daughter, Pebbles. The §401(k) plan permits non-spouse rollovers but also states that non-spouse beneficiaries must complete distribution within five years of death. If Pebbles completes a non-spouse rollover before the end of the year following Fred's death, the five-year rule will not apply to her inherited IRA. Instead, Pebbles will obtain the "stretch out" described above. Note, if Pebbles completes the non-spouse rollover in the year after Fred's death, her RMD for such year may not be transferred to the inherited IRA.

- **What about trusts as beneficiaries?**

If a decedent dies naming a trust as beneficiary of an IRA, complicated rules apply in determining RMDs applicable to the trust (see §13.2(1)(i), above. Said IRA will be an inherited IRA in the name of the decedent f/b/o the trust. Moreover, if the decedent of a retirement plan account dies naming a trust as beneficiary, the trustee could direct the retirement plan to transfer the account directly to an inherited IRA if (i) the plan so allows and (ii) the trust is a qualified trust under the RMD rules. Notice 2007-7.

- **What key rights does a beneficiary of an inherited IRA have?**

    - The beneficiary may take as little as the required RMD each year or additional amounts as permitted by the applicable IRA custodial account agreement.

- If the beneficiary wishes to move the IRA from one custodian to another, he or she may do so by way of a direct IRA-to-IRA transfer. Section 402(c)(11).

- As part of his or her estate plan, the beneficiary may designate who will receive the balance of the inherited IRA upon the beneficiary's death. This beneficiary designation does not affect the calculation of RMDs following the beneficiary's death. Thus, for example, if the beneficiary of an inherited IRA dies naming a trust as his or her successor, the trustee will be required to continue the RMD calculation as was formerly utilized by the beneficiary.

- The beneficiary of an inherited IRA may take distributions before he or she attains age 59½ free of the 10% penalty of IRC §72(t).

- The beneficiary of an inherited IRA may deduct from his or her income tax liability associated with IRA withdrawals the estate tax attributable to such IRA under IRC §691(c).

- In the process of a non-spouse rollover from a qualified plan, the beneficiary can convert the account to a Roth under the rules described at Section 1.2(4), above.

- **What rights does a beneficiary of an inherited IRA not have?**

  - The beneficiary of an inherited IRA may not consolidate said IRA with an IRA of which the beneficiary is an account holder.

  - The beneficiary of an inherited IRA may not make pre-tax or after tax contributions to the inherited IRA.

  - A non-spouse beneficiary may not receive a distribution in the beneficiary's name and then roll the distribution to another IRA. This could be accomplished, however, by way of an IRA-to-IRA direct transfer.

  - The beneficiary may not roll an inherited IRA into a retirement plan account in the beneficiary's name.

  - Under current law, an inherited IRA cannot be converted to a Roth IRA.

As mentioned above, if a surviving spouse is the beneficiary of an IRA, until such IRA is rolled over into an IRA in the spouse's name, the IRA is an inherited IRA in the hands of the surviving spouse. Under IRC §408 and §402, a surviving spouse may take a distribution of the IRA and roll it into an IRA in his or her name. Thereafter, the rollover IRA is no longer an inherited IRA but an IRA of which the spouse is the account holder for all purposes.

- **Creditor protection of an inherited IRA.**

Whether an inherited IRA is entitled to creditor protection is an issue "in process". For debtors asserting the federal bankruptcy exemptions, there are two conflicting rulings. In the case of *In re Chilton*, (Bankr. Ct, TX 35 2010), the Bankruptcy Court found that inherited IRAs

are not entitled to federal bankruptcy protection. However, a United States Bankruptcy Court in the District of Minnesota came to the opposite conclusion. *In re Nessa*, (Bankr. Ct. Minn. 2010). As to the application of state protective statutes (where the state exemptions are elected in the bankruptcy), there have been several cases (Alabama, California, Illinois, Oklahoma, Texas and Wisconsin) where protection has been denied. For a discussion of these cases, *see* "Are Inherited IRAs Protected Under a State Exemption Statute?" Steve Leimberg's Employee Benefits and Retirement Planning Email Newsletter – Archive Message No. 427. In *In re McClelland*, 2008 W.L. 89901 (Bankr. D. Idaho), the court allowed protection for an inherited IRA under Idaho's statute. Here in Washington state, RCW 6.15.020 is very broadly written (and very similar to the Idaho statute) so that absent a "result oriented decision" the correct answer should favor exemption of an inherited IRA under said statute. As a result of all of this, if the account holder is very worried about creditor protection for his beneficiaries, a trust as beneficiary (as opposed to the beneficiaries outright) should be considered.

Appendices

§13.22. Appendix A Beneficiary Designation Agreement - Surviving Spouse Naming Multiple Children
§13.23. Appendix A-1 Primary Beneficiary: Surviving Spouse – Secondary Beneficiary: Children
§13.24. Appendix B Revocable Living Trust Provisions (Non-Pro Rata Powers)
§13.25. Appendix C Beneficiary Designation
§13.26. Appendix D Will Provisions (Non-Pro Rata Powers)
§13.27. Appendix E Sample QTIP Beneficiary Designation Agreement
§13.28. Appendix F Sample IRA QTIP Trust Provisions (Non "Safe Harbor")
§13.29. Appendix G Specific Bequest of Non-Working Spouse's Community Interest
§13.30. Appendix H Will Provisions – Miscellaneous Retirement Plan IRA Matters
§13.31. Appendix I Life Expectancy and Distribution Period Tables

The author expresses no legal, tax, or other opinions herein or with regard to the forms appearing as appendices (or any other forms attached to this Article). Also, the author takes no responsibility for misstatements or errors that may appear herein as these materials cannot be relied upon as research materials. The following should only be used upon a thorough review of the client's facts and applicable law. Moreover, the reproduction of Reg. 1.401(a)(9)-9 appearing at Appendix I is for illustrative purposes only and, due to possible updates and computer glitches, only the actual regulation from a service publishing the same should be used to make a calculation

§13.22. Appendix A—Beneficiary Designation Agreement – Surviving Spouse Naming Multiple Children

IRA BENEFICIARY DESIGNATION AGREEMENT

The undersigned "IRA Custodian" (____________________) and the undersigned "Participant" (__________________________) do hereby agree as follows with respect to the IRA Custodial ("Account") maintained by the IRA Custodian on behalf of the Participant:

1. Primary Beneficiaries. The Primary Beneficiaries of the Participant's Account and their respective shares for purposes of Section 2 herein, shall be as follows:

Beneficiary	Social Security Number	Percentage
		%
		%
		%
		%

2. Separate IRAs. The Participant's Account shall be divided into separate IRAs for the Primary Beneficiaries with each said Primary Beneficiary's IRA to have allocated to it the percentage of the Participant's Account designated above. If a Primary Beneficiary fails to survive the Participant but leaves at least one lineal descendant who survives the Participant, said Primary Beneficiary's IRA shall be further divided, per stirpes, into separate IRAs for said deceased Primary Beneficiary's lineal descendants who survive the Participant (who shall be considered Primary Beneficiaries hereunder); or, if the deceased Primary Beneficiary leaves no lineal descendant surviving the Participant, the percentage of the Participant's Account as designated under Section 1 for the deceased Primary Beneficiary shall be added, pro rata, to the other separate IRAs created hereunder. The identity of the Primary Beneficiaries under this Beneficiary Designation and the shares used to establish each of their separate IRAs under this Section 2, shall be provided to the Custodian by the Personal Representative of the Participant's estate as soon as practicable following the Participant's death and the Custodian shall have no liability whatsoever with regard to said division. Said division shall occur as soon as practicable following the death of the Participant and shall be effective upon the death of the Participant.

3. Separate IRAs. Each Primary Beneficiary's separate IRA under Section 2 shall be and remain a separate IRA in the name of the deceased Participant (F/B/O the Primary Beneficiary). Each separate IRA shall thereafter be paid to its respective Primary Beneficiary in annual payments equal to the required minimum distribution under IRC §401(a)(9) to be initiated and calculated by the Primary Beneficiary; provided, however, that at any time or times requested by the Primary Beneficiary, the Custodian shall distribute to said Primary Beneficiary, from his or her separate IRA, such amount as said Primary Beneficiary may request in writing. Upon written request by the Primary Beneficiary of a separate IRA hereunder, the Custodian

shall transfer said Primary Beneficiary's separate IRA to such other trust or custodial account specified by said Primary Beneficiary; provided that the transferee account is an IRA under IRC §408. Each Primary Beneficiary shall have the power to determine the investment of his or her separate IRA. In the event a Primary Beneficiary of a separate IRA dies before his or her IRA has been distributed to said deceased Primary Beneficiary, the remaining assets in said IRA of said deceased Primary Beneficiary shall be divided into separate IRAs for the beneficiary or beneficiaries designated by said deceased Primary Beneficiary on a form reasonably acceptable to the Custodian; or, to the extent a beneficiary has not been so designated, the deceased Primary Beneficiary's IRA shall be divided, per stirpes, into separate IRAs for the lineal descendants of the deceased Primary Beneficiary who survive said Primary Beneficiary or, if none, per stirpes for the then living lineal descendants of the Participant, the identity of whom and shares of which the Personal Representative of the deceased Primary Beneficiary's estate shall provide to the Custodian. Distributions from an IRA created for a beneficiary of a deceased Primary Beneficiary shall occur as required by IRC §401(a)(9) and shall be calculated and initiated by said beneficiary. Moreover, said beneficiary shall, with respect to his or her IRA, have all rights of a Primary Beneficiary described above relative to additional withdrawals, transfer and investment control.

4. Miscellaneous. By entering into this Beneficiary Designation Agreement, the IRA Custodian does hereby acknowledge and agree that:

(a) No Required Distributions Other than Minimum Distributions. Other than the minimum distributions required by law, neither the Participant nor any beneficiary shall be required to take any distribution at any time.

(b) Responsibility for Minimum Distributions. Any minimum distribution shall be initiated and calculated by the Participant while living and, after the Participant's death, the beneficiary with respect to his or her separate IRA. The Custodian shall be under no obligation to initiate or calculate any minimum distribution.

(c) Modification of IRA Trust. By its acceptance of this Beneficiary Designation Agreement, the Custodian agrees that its printed IRA Agreement is amended so that the provisions of this Beneficiary Designation Agreement shall control in the event of any difference or conflict between this Beneficiary Designation Agreement and the terms of the printed IRA Agreement. Accordingly, this Beneficiary Designation Agreement amends the printed IRA Agreement to include provisions not otherwise in the printed IRA Agreement and to supersede and replace any provisions otherwise inconsistent with the provisions of this Beneficiary Designation Agreement; provided, however, that nothing herein that would be contrary to the requirements of IRC §408 or §401(a)(9) relative to an individual retirement account and distributions therefrom shall be effective.

(d) Agreement Revocable. This Beneficiary Designation Agreement may be altered, changed or revoked during the Participant's lifetime. Upon the Participant's death, this Beneficiary Designation Agreement shall become irrevocable.

DATED this ___ day of _______________, 20___.

Participant: ______________________________________

____

IRA Custodian: ______________________________________

By:___________________________________

Its: ___________________________________

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§13.23. Appendix A-1—Primary Beneficiary: Surviving Spouse—Secondary Beneficiary: Children

BENEFICIARY DESIGNATION

The undersigned "IRA Custodian" (______________________________) and the undersigned " Participant" ________________________________ do hereby agree as follows with respect to the IRA Custodial ("Account") maintained by the IRA Custodian on behalf of the Participant:

1. Primary Beneficiary. If __________________________ (spouse) survives the Participant, the beneficiary of the Account shall be ________________________. ________________________ may roll over all or any portion of the Account payable to her hereunder into an IRA in __________________________'s name, whether or not the custodian or trustee of the recipient IRA is the IRA Custodian hereunder. The IRA Custodian shall fully cooperate with ___________________________ with regard to such a rollover.

2. Contingent Beneficiaries. In the event ___________________________ does not survive the Participant, the Secondary Beneficiaries of the Participant's Account and their respective shares for purposes of Section 2.a herein, shall be as follows:

Beneficiary	Percentage
___________________________	___%
___________________________	___%

a. Separate IRAs. The Participant's Account shall be divided into separate IRAs for the Secondary Beneficiaries with each said Secondary Beneficiary's IRA to have allocated to it the percentage of the Participant's Account designated above. If a Secondary Beneficiary fails to survive the Participant but leaves at least one lineal descendant who survives the Participant, said Secondary Beneficiary's IRA shall be further divided, per stirpes, into separate IRAs for said deceased Secondary Beneficiary's lineal descendants who survive the Participant (who shall be considered Secondary Beneficiaries hereunder); or, if the deceased Secondary Beneficiary leaves no lineal descendant surviving the Participant, the percentage of the Participant's Account as designated under this section for the deceased Secondary Beneficiary shall be added, pro rata, to the other separate IRAs created hereunder. The identity of the Secondary Beneficiaries under this Beneficiary Designation and the shares used to establish each of their separate IRAs under this section shall be provided to the Custodian by the Personal Representative of the Participant's estate as soon as practicable following the Participant's death and the Custodian shall have no liability whatsoever with regard to said division. Said division shall occur as soon as practicable following the death of the Participant and shall be effective upon the death of the Participant.

b. Separate IRAs. Each Secondary Beneficiary's separate IRA under this section shall be and remain a separate IRA in the name of the deceased Participant (F/B/O the Secondary Beneficiary). Each separate IRA shall thereafter be paid to its

respective Secondary Beneficiary in annual payments equal to the required minimum distribution under IRC §401(a)(9) to be initiated and calculated by the Secondary Beneficiary; provided, however, that at any time or times requested by the Secondary Beneficiary, the Custodian shall distribute to said Secondary Beneficiary, from his or her separate IRA, such amount as said Secondary Beneficiary may request in writing. Upon written request by the Secondary Beneficiary of a separate IRA hereunder, the Custodian shall transfer said Secondary Beneficiary's separate IRA to such other trust or custodial account specified by said Secondary Beneficiary; provided that the transferee account is an IRA under IRC §408. Each Secondary Beneficiary shall have the power to determine the investment of his or her separate IRA. In the event a Secondary Beneficiary of a separate IRA dies before his or her IRA has been distributed to said deceased Secondary Beneficiary, the remaining assets in said IRA of said deceased Secondary Beneficiary shall be divided into separate IRAs for the beneficiary or beneficiaries designated by said deceased Secondary Beneficiary on a form reasonably acceptable to the Custodian; or, to the extent a beneficiary has not been so designated, the deceased Secondary Beneficiary's IRA shall be divided, per stirpes, into separate IRAs for the lineal descendants of the deceased Secondary Beneficiary who survive said Secondary Beneficiary or, if none, per stirpes for the then living lineal descendants of the Participant, the identity of whom and shares of which the Personal Representative of the deceased Secondary Beneficiary's estate shall provide to the Custodian. Distributions from an IRA created for a beneficiary of a deceased Secondary Beneficiary shall occur as required by IRC §401(a)(9) and shall be calculated and initiated by said beneficiary. Moreover, said beneficiary shall, with respect to his or her IRA, have all rights of a Secondary Beneficiary described above relative to additional withdrawals, transfer and investment control.

3. Miscellaneous. By entering into this Beneficiary Designation Agreement, the IRA Custodian does hereby acknowledge and agree that:

a. No Required Distributions Other than Minimum Distributions. Other than the minimum distributions required by law, neither the Participant nor any beneficiary shall be required to take any distribution at any time.

b. Responsibility for Minimum Distributions. Any minimum distribution shall be initiated and calculated by the Participant while living and, after the Participant's death, the beneficiary with respect to his or her separate IRA. The Custodian shall be under no obligation to initiate or calculate any minimum distribution.

c. Modification of IRA Trust. By its acceptance of this Beneficiary Designation Agreement, the Custodian agrees that its printed IRA Agreement is amended so that the provisions of this Beneficiary Designation Agreement shall control in the event of any difference or conflict between this Beneficiary Designation Agreement and the terms of the printed IRA Agreement. Accordingly, this Beneficiary Designation Agreement amends the printed IRA Agreement to include provisions not otherwise in the printed IRA Agreement and to supersede and replace any provisions otherwise inconsistent with the provisions of this Beneficiary Designation Agreement; provided, however, that nothing herein that would be contrary to the requirements of IRC §408 or

§401(a)(9) relative to an individual retirement account and distributions therefrom shall be effective.

d. Agreement Revocable. This Beneficiary Designation Agreement may be altered, changed or revoked during the Participant's lifetime. Upon the Participant's death, this Beneficiary Designation Agreement shall become irrevocable.

Dated this _____ day of ______________________, 20___.

Participant: ____

Spouse: ____

IRA Custodian: ____
By:____
Its: ____________________________________

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§13.23. Appendix A-2—Short Form Designations

BENEFICIARY DESIGNATION

- Primary Beneficiary. [Spouse]; provided, however, that any portion of the account disclaimed by [spouse] shall pass to the [spouse] Trust under Article V of the Last Will of ______________________.

- Secondary Beneficiary. If [spouse] does not survive the account holder, the account shall be divided into separate accounts; one for each child of the account holder's who survives the account holder and one for each deceased child of the account holder's who leaves at least one lineal descendant surviving the account holder. The separate accounts with respect to a deceased child of the account holder's who leaves a lineal descendant surviving the account holder shall be further divided, per stirpes, into separate accounts for the descendants of the deceased child who survive the account holder. The separate account of any descendant of a deceased child of the account holder's who is then under thirty (30) years of age shall be payable to said descendant's trust under Article VI.B of the Last Will of ______________________.

§13.24. Appendix B—Revocable Living Trust Provisions (Non-Pro Rata Powers)

Division of Trust Property Upon Death of First Grantor. As soon as practicable after the death of the first of the Grantors to die, the Trustee shall divide this Trust into two (2) separate shares, one separate trust share to be designated the "Surviving Grantor's Trust", and the other separate trust share to be designated the "Family Trust". The Surviving Grantor's Trust shall consist of the surviving Grantor's community property and separate property interests held by (or, as a result of the death of the deceased Grantor distributed to), this Trust and the surviving Grantor's separate property interest held by this Trust. The Family Trust shall consist of the deceased Grantor's community property and separate property interests held by (or, as a result of the death of the deceased Grantor distributed to), this Trust.

Non-Pro Rata Division/Retirement Benefits. The Trustee (and the deceased Grantors' Personal Representative) are fully and completely authorized to agree with the surviving Grantor to make an approximately equal non-pro rata division of the Grantors' former community property (both probate and non-probate); provided, however, that property shall be exchanged as its exchange date value. In making said non-pro rata division, the Grantors intend, to the maximum extent possible, that any right to "Retirement Benefits" (individual retirement account, annuity, bond or SEPP under IRC §408, a tax deferred annuity under IRC §403, or a retirement plan under IRC §401) shall be allocated to the Surviving Grantor's Trust. Notwithstanding any other provision of this Trust to the contrary, the Surviving Grantor shall have the unilateral right to withdraw, at any time, any right to a Retirement Benefit allocated to the Surviving Grantor's Trust under the sentence immediately preceding. In the event that, notwithstanding the preceding, a right to a Retirement Benefit is allocated to the Family Trust, then, it is the Grantor's intent, that, to the maximum extent possible, the same be allocated to the portion of said Family Trust for which a federal estate tax marital deduction is elected; provided, however, immediately after said allocation, said right shall be distributed to the Surviving Grantor, outright.

Retirement Benefits. Notwithstanding any other provision of this Trust, the Trustee may not distribute to or for the benefit of either Grantor's estate, any charity or any other non-individual beneficiary any Retirement Benefits. It is the Grantor's intent that all Retirement Benefits be distributed to or held for only individual beneficiaries, within the meaning of Section 401(a)(9) and applicable regulations. Moreover, notwithstanding any other provision of this Trust or state law, a person's "lineal descendants" for purposes of this instrument shall not include any individual who is a lineal descendant by virtue of legal adoption if such individual (i) was adopted after the Grantor's death and (ii) is older than the oldest beneficiary of this Trust who is living on said date. Any power of appointment under a Trust hereunder shall not be exercisable with respect to Retirement Benefits, to the extent the existence or exercise of said power would result in the Trust failing to have "identifiable beneficiaries" for purposes of the qualified Trust Rules of Treasury Regulation 1.401(a)(9)-4QA5 or to the extent the existence or exercise of said power would result in the Trust being considered to have a beneficiary older than the oldest beneficiary of this Trust who is living on the date specified above. [As an alternative, this provision could specify that, to the extent a Trust becomes a beneficiary of a Retirement Benefit, any withdrawals or distributions from the Plan or IRA will be distributed to the income beneficiary. *See* Reg. §1.401(a)(9)-5QA7(c)(3)(Ex.2).]

§13.25. Appendix C—Beneficiary Designation

Designation of Surviving Spouse (With Disclaimer Opportunity) and Contingent Beneficiary
"Safe Harbor" Trust for Children

The undersigned "IRA Custodian" (____________________) and the undersigned "Participant" (____________________) do hereby agree as follows with respect to the IRA Custodial ("Account") maintained by the IRA Custodian on behalf of the Participant:

1. Primary Beneficiary. If ________________ survives the Participant, the beneficiary of the Account shall be ________________; provided, however, that any portion of the account disclaimed by her shall pass to the ________________ Family Trust.

2. Contingent Beneficiary. In the event ________________ does not survive the Participant, the Account shall be divided into equal accounts: one account for each child of the Participant's who survives the Participant and one account for each child of the Participant's who fails to survive the Participant but who leaves at least one lineal descendant of his or hers surviving the Participant. The account of a surviving child of the Participant's shall be payable to said child as provided herein. The account of a deceased child of the Participant's who leaves at least one lineal descendant surviving the Participant, shall be divided, per stirpes, into separate accounts, for the descendants of said deceased child who survive the Participant and said separate accounts shall be payable to the respective beneficiaries thereof as provided herein.

3. Additional Provisions. By entering into this Beneficiary Designation Agreement, the IRA Custodian does hereby acknowledge and agree that:

a. No Required Distributions Other than Minimum Distributions. Other than the minimum distributions described herein (or required by law) neither the Participant nor any beneficiary shall be required to take any distribution at any time.

b. Computation of Minimum Distributions. If ________________ predeceases the Participant, then the shares under Section 2 shall be divided into separate IRAs under Reg. 1.401(a)(9)-8QA2; and minimum distributions to each beneficiary of a separate account shall be determined with reference to said beneficiary's life expectancy.

c. Special Rules for Contingent Beneficiaries. The identity of the beneficiaries under this Section 2, and their respective accounts, shall be provided to the IRA Custodian by the personal representative of the Participant's estate as soon as practicable following Participant's death. Each such separate account shall thereafter be paid to its respective beneficiary in annual payments equal to the required minimum distribution under IRC §401(a)(9) to be initiated and calculated by the beneficiary; provided, however, that at any time or times requested by the beneficiary of said separate account, the IRA Custodian shall distribute to said beneficiary, from his or her separate account, such amount as said beneficiary may request in writing. Upon written request by the beneficiary of a separate account hereunder, the IRA Custodian shall transfer said beneficiary's separate account to such other trust or custodial account specified by said beneficiary; provided that the transferee account is an IRA under IRC §408. After the

death of the Participant, the beneficiary shall have the power to determine the investment of his or her Account. *The foregoing provisions of this Section 3(c) notwithstanding, however, during any period in which a child of the Participant for whom a separate account is established hereunder is under _________ (___) years of age (or a descendant of a deceased child of the Participants' for whom a separate account is established hereunder is under ____________ (___) years of age), the Trustee of said beneficiary's separate trust fund under the _________________ Family Trust shall have the sole and exclusive right to exercise the powers enumerated in this Section 3(c) on behalf of said beneficiary; provided, however, that any distribution (but not IRA to IRA transfer) from said beneficiary's account shall be made to said beneficiary.* [The foregoing sentence is an example of a "Conduit Trust" format.]

d. Spousal Rollover. If _________________ survives the Participant, the Account payable to her under Section 1 herein, may be rolled over into an IRA in _________________'s name, whether or not the custodian or trustee of the recipient IRA is the IRA Custodian. The IRA Custodian will fully cooperate with _________________ with regard to such a rollover.

e. Responsibility for Minimum Distributions. Any minimum distribution shall be initiated and calculated by the Participant while living and, after the Participant's death, the beneficiary. The Custodian shall be under no obligation to initiate or calculate any minimum distribution.

f. Modification of IRA Trust. By its acceptance of this beneficiary Designation Agreement, the IRA Custodian agrees that its printed IRA Trust document is amended so that the provisions of this Beneficiary Designation Agreement shall control in the event of any difference or conflict between this Beneficiary Designation Agreement and the terms of the printed IRA Trust document. Accordingly, this Beneficiary Designation Agreement amends the printed IRA Trust document to include provisions not otherwise in the printed IRA Trust document and to supersede and replace any provisions otherwise inconsistent with the provisions of this Beneficiary Designation Agreement; provided, however, that nothing herein that would be contrary to the requirements of IRC §408 or §401(a)(9) relative to an individual retirement account and distributions therefrom shall be effective.

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g. Agreement Revocable. This Beneficiary Designation Agreement may be altered, changed or revoked during the Participant's lifetime. Upon the Participant's death, this Beneficiary Designation Agreement shall become irrevocable.

Dated this _____ day of ______________________, 20___.

Participant: ____
____

Spouse of Participant: ____
____

IRA Custodian: ____
By:____
Its: _____________________________________

§13.26. Appendix D—Will Provisions (Non-Pro Rata Powers)

Allocation of Retirement Benefits in Non-Pro Rata Division. In the furtherance of the settlement of my estate and all Trusts created under this Will, I fully and completely authorize my Personal Representative and the Trustee of any Trust created by this Will to agree with my wife to make an approximate equal division of our former community property (both probate and non-probate). Therefore, my Personal Representative and Trustee may exchange with my wife any interest I may have in community property for my wife's community property. The property shall be exchanged at its exchange date value. It is my intent that, to the extent possible, in the process of any non-pro rata division of community property, any interest in an IRA under IRC §408, a tax deferred annuity under IRC §403 or a retirement plan under IRC §401 be allocated to my wife. Moreover, it is my intent that, in any non-pro rata distribution of assets under Article ____, above, to the extent possible, any such benefits be allocated to that portion of the Trust that would be included in my wife's estate if she died immediately before such division; *provided, however, that immediately after such allocation, the right to such assets shall be distributed, outright, to my wife.*

§13.27. Appendix E—Sample QTIP Beneficiary Designation Agreement

The undersigned ______________________ ("Account Holder") and the undersigned SEI Investments ("Custodian") do hereby agree as follows with respect to the Account Holder's IRA maintained by Custodian, account number _____________________ ("Account").

1. ***Primary Beneficiaries***. If ______________________ ("____________") survives the Account Holder, the Beneficiary of the Account shall be the Trust under Section 5.2 of the Account Holder's Will (the "Marital Trust"). Said IRA shall be known as the "Marital Trust IRA" and shall be payable as follows:

(a) *Distributions*. At least annually, the Custodian shall distribute from the Marital Trust IRA to the Marital Trust the greater of (A) all of the net income of the Account or (B) the required minimum distribution ("RMD") under Section 401(a)(9) of the Internal Revenue Code of 1986 (IRC) required for such year. In addition, the Custodian shall distribute to the Marital Trust from the Marital Trust IRA so much of said IRA as the Trustee of the Marital Trust may, from time to time, request in writing. Under the terms of the Marital Trust, the Trustee of the Marital Trust shall distribute to ___________________, no less frequently than annually, that amount of the foregoing as equals the net income of the Marital Trust IRA. For the purposes of this paragraph, "net income" shall be determined by the Trustee of the Marital Trust in accordance with Washington State law and the Marital Trust and the Custodian shall have no liability for such determination. Moreover, for the purposes of the foregoing, it is the Account Holder's intent that the Marital Trust shall be considered a "qualified trust" under Reg. 1.401(a)(9)-5 and RMDs from the Marital Trust IRA shall be computed with reference to the life expectancy of ______________________ under Reg. 1.401(a)(9)-5QA5(c)(1).

(b) *Account Holder's Intent*. The Account Holder intends that the Marital Trust IRA and the Marital Trust qualify for the marital deduction allowable in determining the federal estate tax upon the Account Holder's estate. No provision contained in this Beneficiary Designation Agreement or the IRA plan which would prevent the Marital Trust IRA from so qualifying shall apply to the Marital Trust IRA and it is the Account Holder's intent that any court having jurisdiction over this Beneficiary Designation, the IRA Plan and the Marital Trust construe said documents accordingly.

2. ***Contingent Beneficiaries***. In the event _____________________ does not survive the Account Holder, the contingent beneficiaries and their shares shall be as follows:

3. ***Miscellaneous***.

(a) *Transfers*. Upon written request by the Trustee of the Marital Trust, the Custodian shall transfer said trust's IRA to another institution specified by the trustee provided that (i) the transferee account is an IRA under §408 and (ii) prior to said transfer, the transferee agrees, in writing, to be bound by all terms and provisions of this Beneficiary Designation Agreement.

(b) *Limitations*. Nothing herein that would be contrary to the requirements of IRC §408 or §401(a)(9) relative to an individual retirement account and RMDs therefrom shall be effective.

(c) *Agreement Revocable*. This Beneficiary Designation Agreement may be altered, changed or revoked by the Account Holder during his lifetime and shall become irrevocable on his death.

DATED this ___ day of _______________, 20__.

Participant: ___________________________

Spouse of Participant: __________________________

Custodian: _________________________________

By ______________________________

_____________, Its______________

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§13.28 Appendix F—Sample IRA QTIP Trust Provisions

MARITAL IRA TRUST

IRAs Payable to The Marital Trust of ____________________. The following shall apply with respect to any and all IRAs of which the Marital Trust of ____________________ has been designated as beneficiary (and the following shall supersede any contrary provision of this Will):

a. *Withdrawals From IRA*. I contemplate that I may designate the ______________________________ Trust as beneficiary of a portion of one or more individual retirement accounts ("IRA") in my name. To the extent an IRA is payable to the said Trust, such IRA shall be referred to herein as the "Account." The Trustee shall withdraw from the Account and distribute to my wife, during her lifetime, in annual or more frequent installments, all of the "Net Income" of the Account (to be determined in the manner set forth at Section 5.1(e)(b), below). If, during any calendar year, the withdrawal of "Net Income" does not satisfy the required minimum distribution ("RMD") for such calendar year under Section 401(a)(9) ("RMD"), the Trustee shall withdraw from the Account and deposit to the Trust that amount required to satisfy the RMD requirement for such calendar year.

b. *Definition of Net Income*. The Trustee shall, in accordance with the Washington State Principal and Income Act of 2002 (RCW 11.104A et seq.) or its successor and in a manner necessary for both the Account and this Trust to qualify for "Q-Tip" treatment under Rev. Rul. 2006-26: (i) determine all questions as to what is income and what is principal of the Account and the Marital Trust and (ii) to credit or charge to income or principal or to apportion between them any receipt or gain and any charge, disbursement or loss. The power to either (i) convert principal to income under RCW 11.104.020 or (ii) exercise the powers given by RCW 11.104.040 with respect to creation, modification or elimination of a "unitrust" interest shall be available to and exercisable by the Trustee in accordance with the terms of said statutes. For the purposes of determining the Net Income required to be distributed to my wife hereunder, the Net Income of the Account shall be determined under the foregoing principles as though the assets of the Account are held directly by this Trust.

c. *Account Q-Tip and Minimum Distributions*. With regard to the Account, the Trustee (and/or my Personal Representative) shall (i): take any and all action so that the Account qualifies as qualified terminable interest property under Section 2056 of the Code; and (ii) is authorized, in the Personal Representative's sole and absolute discretion, to elect that any part or all of the Account be treated as qualified terminable interest property for the purpose of qualifying for the marital deduction allowable in determining the federal estate tax and/or Washington State estate tax upon my estate. Further, the Trustee of the Trust shall: (i) at my wife's request, direct the Custodian of the Account to promptly convert unproductive or under productive assets of the Account to productive assets; and (ii) take all other actions and do all things as may be necessary so that the Account and the Trust be treated as qualified terminable interest property for the purpose of qualifying for the marital deduction allowable in determining the federal estate tax

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and/or Washington State estate tax upon my estate. I hereby direct that no provision contained herein which would prevent the Account or this Trust from so qualifying shall apply to the Account or this Trust. It is my intention that any court having jurisdiction over this Trust construe it accordingly.

d. *RMD Calculation*. I intend that RMDs from the Account be calculated with reference to my wife's life expectancy. Therefore, it is my intent that the Trust be a Qualified Trust within the meaning of Reg. 1.401(a)(9)-4QA5 and that my wife be considered the oldest beneficiary of the Trust for RMD purposes (without application of the "conduit trust" rules of Reg. 1.401(a)(9)-5QA7(c)(3) (Ex. 2). To that end, the following shall apply: (i) during my wife's lifetime, the Trustee shall not make any distributions from the Trust (or cause distributions from the Account) to anyone other than my wife as set forth in this Section 5, (ii) the Trustee may not distribute any portion of the Account to or for the benefit of my estate or use the Account for payment of my debts, taxes, expenses of administration, claims against my estate or payment of taxes due on account of my death, (iii) following my wife's death, no portion of the Account may be distributed to any individual beneficiary older than my wife or, subject to contrary and superseding federal or state law, a non-individual; and, (iv) where used in this trust, the terms children, lineal descendants or words of similar import shall exclude anyone older than my wife.

(e) *Division of Account and Transfers Following my Wife's Death*. To facilitate the division and distribution set forth at Section 5.3 of this Will following my wife's death, the Trustee shall establish separate IRAs from the Account for each beneficiary under said Section 5.3. Each such separate IRA will receive said beneficiary's percentage portion of the Account as determined under Section 5.3. Each such IRA shall be in my name (deceased) for the benefit of ("f/b/o") the beneficiary for whom the IRA is established. The actual division shall occur by way of a direct transfer from the Account to each of the separate IRAs in accordance with IRC §402(c)(11). With respect to a separate IRA payable to a trust under Section 5.3(4) of this Will, any amount withdrawn from said IRA by the Trustee shall be paid to the beneficiary of the trust as it is my intent that said trust qualify as a conduit trust within the meaning of Reg. 1.401(a)(9)-5QA7(c)(3) (Ex. 2).

§13.29. Appendix G—Specific Bequest of Non-Working Spouse's Community Interest

IRAs/Retirement Plans of Wife. If my wife survives me, I hereby give, devise and bequeath to her any community property interest I may have in any of the following held in my wife's name or for her benefit: An individual retirement account, annuity or bond under IRC §408, a tax deferred annuity under IRC §403 or a retirement plan under IRC §401. To the extent my wife should disclaim any interest hereunder, said disclaimed amount shall pass as part of the residue of my estate.

§13.30. Appendix H—Will Provisions – Miscellaneous Retirement Plan IRA Matters

Retirement Benefits.

1. Retirement Benefits Defined. For the purposes of this Article ___, the term "Retirement Benefits" shall mean and refer to any plan or account which is subject to the minimum distribution rules of IRC §401(a)(9).

2. Non-Pro Rata Division. The Trustee of the [spousal trust] shall have the full and complete power to agree with [my spouse] to an equal division, on a non-pro rata basis, of our former community property. In this regard, it is my intent that, to the extent practicable and advisable under federal tax law, any Retirement Benefits be allocated to [my spouse] as her share of our former community property.

3. Retirement Benefits Allocated to [spousal trust]. To the extent Retirement Benefits remain payable to the [spousal trust] after any non-pro rata division of our former community property, it is my intent that required minimum distributions ("RMD") be calculated with reference to the life expectancy of [spouse]. Therefore it is my intent that this Trust be a Qualified Trust within the meaning of Reg. 1.401(a)(9)-4QA5 and that my [husband/wife] be considered the oldest beneficiary of the Trust for RMD purposes (without application of the "conduit trust" rules of Reg. 1.401(a)(9)-5QA7(c)(3) (Ex. 2). To that end, the following shall apply: (i) during my [husband/wife]'s lifetime, the Trustee shall not make any distributions from the Trust (or cause distributions from a Retirement Benefit) to anyone other than my [husband/wife] as set forth by Article V, above, (ii) the Trustee may not distribute any portion of a Retirement Benefit to or for the benefit of my [husband/wife]'s estate or use a Retirement Benefit for payment of my debts, taxes, expenses of administration, claims against my estate or payment of taxes due on account of my death, (iii) no portion of a Retirement Benefit may be distributed to any individual beneficiary older than my [husband/wife], or, subject to contrary and superseding federal or state law, a non-individual; and, (iv) where used in this Trust, the terms descendants, lineal descendants or words of similar import shall exclude anyone older than my [husband/wife].

4. Retirement Benefits Payable to Trust for Descendant under Thirty (30) Years of Age. To the extent any Retirement Benefits are payable to a trust for a descendant of mine under Article ____, above, by virtue of said trust being designated beneficiary thereof, any and all RMDs, as well as any and all other withdrawals or distributions taken by the Trustee, shall be distributed to the beneficiary for whom the Trust is established as it is my intent that said Trust qualify as a "conduit trust" under Reg. 1.401(a)(9)-5A7(c)(3) (ex. 2). Any provision of this Will which would prevent said Trust from being considered a conduit trust under said regulation shall not apply to this Trust with respect to the Retirement Benefit and provision needed for said qualification which has been omitted from this Will shall be added under Washington state's Trust and Estate Dispute Resolution Act.

5. Qualified Trust. If a Retirement Benefit is payable to any Trust under this Will, it is my intent that said Trust be considered a "qualified trust" under Reg. 1.401(a)(9). Any provision of this Will which would result in said Trust failing to so comply, shall not apply and

any provision needed for said qualification which has been omitted from this Will, shall be added under Washington state's Trust and Dispute Resolution Act.

6. Copy of Will to Custodian/Administrator. My Personal Representative and/or Trustee shall provide a copy of this Will to the plan administrator or custodian of the Retirement Benefits payable to a Trust under this Will within the time period required under Reg. 1.401(a)(9) which, as of the time of this Will is no later than October 31 of the calendar year following the year of my death.

7. Power to Deal with Plan Administrator/Custodian. My Personal Representative and Trustees shall each have full power and authority to request information from and provide information to the custodian or plan administrator of any Retirement Benefit.

8. RMD for Year of Death. If, as of my death, I have not taken the full RMD for the calendar year of my death, (i) said RMD shall be taken no later than the December 31st of the calendar year of my death, (ii) my Personal Representative shall have the power to cause such RMD, and (iii) said RMD shall be the property of the beneficiary of the Retirement Benefit (subject to the conduit trust rules of Section 4, above).

9. Division of Retirement Benefits/Transfers. If a Trust created by this Will is later divided into separate shares for additional trusts and/or individuals, the Retirement Benefits of which said Trust is a beneficiary shall be divided into separate accounts, pro rata, according to the respective shares to be so created. Each such account shall be in my name, deceased for the benefit of ("f/b/o") the individual or Trust for whom the separate account is established. Said division shall occur by way of a direct transfer from the Retirement Benefit as it existed before the division to each of the separate accounts. In the case of an IRA, the separate account shall be established as separate f/b/o IRAs in the manner described above. With respect to these successor accounts and IRAs, RMDs shall continue to be calculated in the manner as was initially commenced following my death. Upon the attainment of an age by a child of mine for whom a separate trust was established which age entitled said child to a portion of his or her Trust outright, a corresponding portion of the Retirement Benefit as then so constituted shall be directly transferred in an f/b/o account (or in the case of an IRA, a separate f/b/o IRA) in the name of my child.

10. Non-Spouse Rollover. If the Retirement Benefit is a retirement plan (as opposed to an IRA) and said retirement plan permits a non-spouse rollover pursuant to IRC §402(c)(11), I direct my Trustee to complete the non-spouse rollover from said retirement plan to an IRA. Said transferee IRA shall be fully subject to all of the foregoing provisions of this Section ____. Under current IRS guidelines, if I should die before reaching my "required beginning date" with respect to a retirement plan, the non-spouse rollover must be completed by the end of the calendar year following the calendar year of my death so as to obtain with regard to the transferee IRA the RMD calculation described at this Article ____.

§13.31. Appendix I—Life Expectancy and Distribution Period Tables.

Reg. 1.401(a)(9)-9

Reg §1.401(a)(9)-9. Life expectancy and distribution period tables.

Caution: Reg. §1.401(a)(9)-9, following, is effective 1/1/2003.

Q-1. What is the life expectancy for an individual for purposes of determining required minimum distributions under section 401(a)(9)?

A-1. The following table, referred to as the Single Life Table, is used for determining the life expectancy of an individual:

Single Life Table

Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
0	82.4	29	54.3	58	27.0	87	6.7
1	81.6	30	53.3	59	26.1	88	6.3
2	80.6	31	52.4	60	25.2	89	5.9
3	79.7	32	51.4	61	24.4	90	5.5
4	78.7	33	50.4	62	23.5	91	5.2
5	77.7	34	49.4	63	22.7	92	4.9
6	76.7	35	48.5	64	21.8	93	4.6
7	75.8	36	47.5	65	21.0	94	4.3
8	74.8	37	46.5	66	20.2	95	4.1
9	73.8	38	45.6	67	19.4	96	3.8
10	72.8	39	44.6	68	18.6	97	3.6
11	71.8	40	43.6	69	17.8	98	3.4
12	70.8	41	42.7	70	17.0	99	3.1
13	69.9	42	41.7	71	16.3	100	2.9
14	68.9	43	40.7	72	15.5	101	2.7
15	67.9	44	39.8	73	14.8	102	2.5
16	66.9	45	38.8	74	14.1	103	2.3
17	66.0	46	37.9	75	13.4	104	2.1
18	65.0	47	37.0	76	12.7	105	1.9
19	64.0	48	36.0	77	12.1	106	1.7
20	63.0	49	35.1	78	11.4	107	1.5
21	62.1	50	34.2	79	10.8	108	1.4
22	61.1	51	33.3	80	10.2	109	1.2
23	60.1	52	32.3	81	9.7	110	1.1
24	59.1	53	31.4	82	9.1	111+	1.0
25	58.2	54	30.5	83	8.6		
26	57.2	55	29.6	84	8.1		
27	56.2	56	28.7	85	7.6		
28	55.3	57	27.9	86	7.1		

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Q-2. What is the applicable distribution period for an individual account for purposes of determining required minimum distributions during an employee's lifetime under section 401(a)(9)?

A-2. Table for determining distribution period. The following table, referred to as the Uniform Lifetime Table, is used for determining the distribution period for lifetime distributions to an employee in situations in which the employee's spouse is either not the sole designated beneficiary or is the sole designated beneficiary but is not more than 10 years younger than the employee.

Uniform Lifetime Table

Age of employee	Distribution period	Age of employee	Distribution period
70	27.4	92	10.2
71	26.5	93	9.6
72	25.6	94	9.1
73	24.7	95	8.6
74	23.8	96	8.1
75	22.9	97	7.6
76	22.0	98	7.1
77	21.2	99	6.7
78	20.3	100	6.3
79	19.5	101	5.9
80	18.7	102	5.5
81	17.9	103	5.2
82	17.1	104	4.9
83	16.3	105	4.5
84	15.5	106	4.2
85	14.8	107	3.9
86	14.1	108	3.7
87	13.4	109	3.4
88	12.7	110	3.1
89	12.0	111	2.9
90	11.4	112	2.6
91	10.8	113	2.4
92	10.2	114	2.1
93	9.6	115+	1.9

Q-3. What is the joint life and last survivor expectancy of an individual and beneficiary for purposes of determining required minimum distributions under section 401(a)(9)?

A-3. The following table, referred to as the Joint and Last Survivor Table, is used for determining the joint and last survivor life expectancy of two individuals:

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Joint and Last Survivor Table

AGES	0	1	2	3	4	5	6	7	8	9
0	90.0	89.5	89.0	88.6	88.2	87.8	87.4	87.1	86.8	86.5
1	89.5	89.0	88.5	88.1	87.6	87.2	86.8	86.5	86.1	85.8
2	89.0	88.5	88.0	87.5	87.1	86.6	86.2	85.8	85.5	85.1
3	88.6	88.1	87.5	87.0	86.5	86.1	85.6	85.2	84.8	84.5
4	88.2	87.6	87.1	86.5	86.0	85.5	85.1	84.6	84.2	83.8
5	87.8	87.2	86.6	86.1	85.5	85.0	84.5	84.1	83.6	83.2
6	87.4	86.8	86.2	85.6	85.1	84.5	84.0	83.5	83.1	82.6
7	87.1	86.5	85.8	85.2	84.6	84.1	83.5	83.0	82.5	82.1
8	86.8	86.1	85.5	84.8	84.2	83.6	83.1	82.5	82.0	81.6
9	86.5	85.8	85.1	84.5	83.8	83.2	82.6	82.1	81.6	81.0
10	86.2	85.5	84.8	84.1	83.5	82.8	82.2	81.6	81.1	80.6
11	85.9	85.2	84.5	83.8	83.1	82.5	81.8	81.2	80.7	80.1
12	85.7	84.9	84.2	83.5	82.8	82.1	81.5	80.8	80.2	79.7
13	85.4	84.7	84.0	83.2	82.5	81.8	81.1	80.5	79.9	79.2
14	85.2	84.5	83.7	83.0	82.2	81.5	80.8	80.1	79.5	78.9
15	85.0	84.3	83.5	82.7	82.0	81.2	80.5	79.8	79.1	78.5
16	84.9	84.1	83.3	82.5	81.7	81.0	80.2	79.5	7 8.8	78.1
17	84.7	83.9	83.1	82.3	81.5	80.7	80.0	79.2	78.5	77.8
18	84.5	83.7	82.9	82.1	81.3	80.5	79.7	79.0	78.2	77.5
19	84.4	83.6	82.7	81.9	81.1	80.3	79.5	78.7	78.0	77.3
20	84.3	83.4	82.6	81.8	80.9	80.1	79.3	78.5	77.7	77.0
21	84.1	83.3	82.4	81.6	80.8	79.9	79.1	78.3	77.5	76.8
22	84.0	83.2	82.3	81.5	80.6	79.8	78.9	78.1	77.3	76.5
23	83.9	83.1	82.2	81.3	80.5	79.6	78.8	77.9	77.1	76.3
24	83.8	83.0	82.1	81.2	80.3	79.5	78.6	77.8	76.9	76.1
25	83.7	82.9	82.0	81.1	80.2	79.3	78.5	77.6	76.8	75.9
26	83.6	82.8	81.9	81.0	80.1	79.2	78.3	77.5	76.6	75.8
27	83.6	82.7	81.8	80.9	80.0	79.1	78.2	77.4	76.5	75.6
28	83.5	82.6	81.7	80.8	79.9	79.0	78.1	77.2	76.4	75.5
29	83.4	82.6	81.6	80.7	79.8	78.9	78.0	77.1	76.2	75.4
30	83.4	82.5	81.6	80.7	79.7	78.8	77.9	77.0	76.1	75.2
31	83.3	82.4	81.5	80.6	79.7	78.8	77.8	76.9	76.0	75.1
32	83.3	82.4	81.5	80.5	79.6	78.7	77.8	76.8	75.9	75.0
33	83.2	82.3	81.4	80.5	79.5	78.6	77.7	76.8	75.9	74.9
34	83.2	82.3	81.3	80.4	79.5	78.5	77.6	76.7	75.8	74.9
35	83.1	82.2	81.3	80.4	79.4	78.5	77.6	76.6	75.7	74.8
36	83.1	82.2	81.3	80.3	79.4	78.4	77.5	76.6	75.6	74.7
37	83.0	82.2	81.2	80.3	79.3	78.4	77.4	76.5	75.6	74.6
38	83.0	82.1	81.2	80.2	79.3	78.3	77.4	76.4	75.5	74.6
39	83.0	82.1	81.1	80.2	79.2	78.3	77.3	76.4	75.5	74.5
40	82.9	82.1	81.1	80.2	79.2	78.3	77.3	76.4	75.4	74.5
41	82.9	82.0	81.1	80.1	79.2	78.2	77.3	76.3	75.4	74.4
42	82.9	82.0	81.1	80.1	79.1	78.2	77.2	76.3	75.3	74.4

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AGES	0	1	2	3	4	5	6	7	8	9
43	82.9	82.0	81.0	80.1	79.1	78.2	77.2	76.2	75.3	74.3
44	82.8	81.9	81.0	80.0	79.1	78.1	77.2	76.2	75.2	74.3
45	82.8	81.9	81.0	80.0	79.1	78.1	77.1	76.2	75.2	74.3
46	82.8	81.9	81.0	80.0	79.0	78.1	77.1	76.1	75.2	74.2
47	82.8	81.9	80.9	80.0	79.0	78.0	77.1	76.1	75.2	74.2
48	82.8	81.9	80.9	80.0	79.0	78.0	77.1	76.1	75.1	74.2
49	82.7	81.8	80.9	79.9	79.0	78.0	77.0	76.1	75.1	74.1
50	82.7	81.8	80.9	79.9	79.0	78.0	77.0	76.0	75.1	74.1
51	82.7	81.8	80.9	79.9	78.9	78.0	77.0	76.0	75.1	74.1
52	82.7	81.8	80.9	79.9	78.9	78.0	77.0	76.0	75.0	74.1
53	82.7	81.8	80.8	79.9	78.9	77.9	77.0	76.0	75.0	74.0
54	82.7	81.8	80.8	79.9	78.9	77.9	76.9	76.0	75.0	74.0
55	82.6	81.8	80.8	79.8	78.9	77.9	76.9	76.0	75.0	74.0
56	82.6	81.7	80.8	79.8	78.9	77.9	76.9	75.9	75.0	74.0
57	82.6	81.7	80.8	79.8	78.9	77.9	76.9	75.9	75.0	74.0
58	82.6	81.7	80.8	79.8	78.8	77.9	76.9	75.9	74.9	74.0
59	82.6	81.7	80.8	79.8	78.8	77.9	76.9	75.9	74.9	74.0
60	82.6	81.7	80.8	79.8	78.8	77.8	76.9	75.9	74.9	73.9
61	82.6	81.7	80.8	79.8	78.8	77.8	76.9	75.9	74.9	73.9
62	82.6	81.7	80.7	79.8	78.8	77.8	76.9	75.9	74.9	73.9
63	82.6	81.7	80.7	79.8	78.8	77.8	76.8	75.9	74.9	73.9
64	82.5	81.7	80.7	79.8	78.8	77.8	76.8	75.9	74.9	73.9
65	82.5	81.7	80.7	79.8	78.8	77.8	76.8	75.8	74.9	73.9
66	82.5	81.7	80.7	79.7	78.8	77.8	76.8	75.8	74.9	73.9
67	82.5	81.7	80.7	79.7	78.8	77.8	76.8	75.8	74.9	73.9
68	82.5	81.6	80.7	79.7	78.8	77.8	76.8	75.8	74.8	73.9
69	82.5	81.6	80.7	79.7	78.8	77.8	76.8	75.8	74.8	73.9
70	82.5	81.6	80.7	79.7	78.8	77.8	76.8	75.8	74.8	73.9
71	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
72	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
73	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
74	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
75	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
76	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
77	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
78	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
79	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
80	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
81	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
82	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
83	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
84	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
85	82.4	81.6	80.6	79.7	78.7	77.7	76.8	75.8	74.8	73.8
86	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8

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AGES	0	1	2	3	4	5	6	7	8	9
87	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
88	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
89	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
90	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
91	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
92	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
93	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
94	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
95	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
96	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
97	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
98	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
99	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
100	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
101	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
102	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
103	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
104	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
105	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
106	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
107	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
108	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
109	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
110	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
111	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
112	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
113	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
114	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
115+	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8

AGES	10	11	12	13	14	15	16	17	18	19
10	80.0	79.6	79.1	78.7	78.2	77.9	77.5	77.2	76.8	76.5
11	79.6	79.0	78.6	78.1	77.7	77.3	76.9	76.5	76.2	75.8
12	79.1	78.6	78.1	77.6	77.1	76.7	76.3	75.9	75.5	75.2
13	78.7	78.1	77.6	77.1	76.6	76.1	75.7	75.3	74.9	74.5
14	78.2	77.7	77.1	76.6	76.1	75.6	75.1	74.7	74.3	73.9
15	77.9	77.3	76.7	76.1	75.6	75.1	74.6	74.1	73.7	73.3
16	77.5	76.9	76.3	75.7	75.1	74.6	74.1	73.6	73.1	72.7
17	77.2	76.5	75.9	75.3	74.7	74.1	73.6	73.1	72.6	72.1
18	76.8	76.2	75.5	74.9	74.3	73.7	73.1	72.6	72.1	71.6
19	76.5	75.8	75.2	74.5	73.9	73.3	72.7	72.1	71.6	71.1
20	76.3	75.5	74.8	74.2	73.5	72.9	72.3	71.7	71.1	70.6
21	76.0	75.3	74.5	73.8	73.2	72.5	71.9	71.3	70.7	70.1
22	75.8	75.0	74.3	73.5	72.9	72.2	71.5	70.9	70.3	69.7

AGES	10	11	12	13	14	15	16	17	18	19
23	75.5	74.8	74.0	73.3	72.6	71.9	71.2	70.5	69.9	69.3
24	75.3	74.5	73.8	73.0	72.3	71.6	70.9	70.2	69.5	68.9
25	75.1	74.3	73.5	72.8	72.0	71.3	70.6	69.9	69.2	68.5
26	75.0	74.1	73.3	72.5	71.8	71.0	70.3	69.6	68.9	68.2
27	74.8	74.0	73.1	72.3	71.6	70.8	70.0	69.3	68.6	67.9
28	74.6	73.8	73.0	72.2	71.3	70.6	69.8	69.0	68.3	67.6
29	74.5	73.6	72.8	72.0	71.2	70.4	69.6	68.8	68.0	67.3
30	74.4	73.5	72.7	71.8	71.0	70.2	69.4	68.6	67.8	67.1
31	74.3	73.4	72.5	71.7	70.8	70.0	69.2	68.4	67.6	66.8
32	74.1	73.3	72.4	71.5	70.7	69.8	69.0	68.2	67.4	66.6
33	74.0	73.2	72.3	71.4	70.5	69.7	68.8	68.0	67.2	66.4
34	73.9	73.0	72.2	71.3	70.4	69.5	68.7	67.8	67.0	66.2
35	73.9	73.0	72.1	71.2	70.3	69.4	68.5	67.7	66.8	66.0
36	73.8	72.9	72.0	71.1	70.2	69.3	68.4	67.6	66.7	65.9
37	73.7	72.8	71.9	71.0	70.1	69.2	68.3	67.4	66.6	65.7
38	73.6	72.7	71.8	70.9	70.0	69.1	68.2	67.3	66.4	65.6
39	73.6	72.7	71.7	70.8	69.9	69.0	68.1	67.2	66.3	65.4
40	73.5	72.6	71.7	70.7	69.8	68.9	68.0	67.1	66.2	65.3
41	73.5	72.5	71.6	70.7	69.7	68.8	67.9	67.0	66.1	65.2
42	73.4	72.5	71.5	70.6	69.7	68.8	67.8	66.9	66.0	65.1
43	73.4	72.4	71.5	70.6	69.6	68.7	67.8	66.8	65.9	65.0
44	73.3	72.4	71.4	70.5	69.6	68.6	67.7	66.8	65.9	64.9
45	73.3	72.3	71.4	70.5	69.5	68.6	67.6	66.7	65.8	64.9
46	73.3	72.3	71.4	70.4	69.5	68.5	67.6	66.6	65.7	64.8
47	73.2	72.3	71.3	70.4	69.4	68.5	67.5	66.6	65.7	64.7
48	73.2	72.2	71.3	70.3	69.4	68.4	67.5	66.5	65.6	64.7
49	73.2	72.2	71.2	70.3	69.3	68.4	67.4	66.5	65.6	64.6
50	73.1	72.2	71.2	70.3	69.3	68.4	67.4	66.5	65.5	64.6
51	73.1	72.2	71.2	70.2	69.3	68.3	67.4	66.4	65.5	64.5
52	73.1	72.1	71.2	70.2	69.2	68.3	67.3	66.4	65.4	64.5
53	73.1	72.1	71.1	70.2	69.2	68.3	67.3	66.3	65.4	64.4
54	73.1	72.1	71.1	70.2	69.2	68.2	67.3	66.3	65.4	64.4
55	73.0	72.1	71.1	70.1	69.2	68.2	67.2	66.3	65.3	64.4
56	73.0	72.1	71.1	70.1	69.1	68.2	67.2	66.3	65.3	64.3
57	73.0	72.0	71.1	70.1	69.1	68.2	67.2	66.2	65.3	64.3
58	73.0	72.0	71.0	70.1	69.1	68.1	67.2	66.2	65.2	64.3
59	73.0	72.0	71.0	70.1	69.1	68.1	67.2	66.2	65.2	64.3
60	73.0	72.0	71.0	70.0	69.1	68.1	67.1	66.2	65.2	64.2
61	73.0	72.0	71.0	70.0	69.1	68.1	67.1	66.2	65.2	64.2
62	72.9	72.0	71.0	70.0	69.0	68.1	67.1	66.1	65.2	64.2
63	72.9	72.0	71.0	70.0	69.0	68.1	67.1	66.1	65.2	64.2
64	72.9	71.9	71.0	70.0	69.0	68.0	67.1	66.1	65.1	64.2
65	72.9	71.9	71.0	70.0	69.0	68.0	67.1	66.1	65.1	64.2
66	72.9	71.9	70.9	70.0	69.0	68.0	67.1	66.1	65.1	64.1

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AGES	10	11	12	13	14	15	16	17	18	19
67	72.9	71.9	70.9	70.0	69.0	68.0	67.0	66.1	65.1	64.1
68	72.9	71.9	70.9	70.0	69.0	68.0	67.0	66.1	65.1	64.1
69	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.1	65.1	64.1
70	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.0	65.1	64.1
71	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.0	65.1	64.1
72	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.0	65.1	64.1
73	72.9	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
74	72.9	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
75	72.8	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
76	72.8	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
77	72.8	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
78	72.8	71.9	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
79	72.8	71.9	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
80	72.8	71.9	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
81	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
82	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
83	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
84	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
85	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
86	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
87	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
88	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
89	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
90	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
91	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
92	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
93	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
94	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
95	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
96	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
97	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
98	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
99	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
100	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
101	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
102	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
103	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
104	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
105	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
106	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
107	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
108	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
109	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
110	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0

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AGES	10	11	12	13	14	15	16	17	18	19
111	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
112	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
113	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
114	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
115+	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0

AGES	20	21	22	23	24	25	26	27	28	29
20	70.1	69.6	69.1	68.7	68.3	67.9	67.5	67.2	66.9	66.6
21	69.6	69.1	68.6	68.2	67.7	67.3	66.9	66.6	66.2	65.9
22	69.1	68.6	68.1	67.6	67.2	66.7	66.3	65.9	65.6	65.2
23	68.7	68.2	67.6	67.1	66.6	66.2	65.7	65.3	64.9	64.6
24	68.3	67.7	67.2	66.6	66.1	65.6	65.2	64.7	64.3	63.9
25	67.9	67.3	66.7	66.2	65.6	65.1	64.6	64.2	63.7	63.3
26	67.5	66.9	66.3	65.7	65.2	64.6	64.1	63.6	63.2	62.8
27	67.2	66.6	65.9	65.3	64.7	64.2	63.6	63.1	62.7	62.2
28	66.9	66.2	65.6	64.9	64.3	63.7	63.2	62.7	62.1	61.7
29	66.6	65.9	65.2	64.6	63.9	63.3	62.8	62.2	61.7	61.2
30	66.3	65.6	64.9	64.2	63.6	62.9	62.3	61.8	61.2	60.7
31	66.1	65.3	64.6	63.9	63.2	62.6	62.0	61.4	60.8	60.2
32	65.8	65.1	64.3	63.6	62.9	62.2	61.6	61.0	60.4	59.8
33	65.6	64.8	64.1	63.3	62.6	61.9	61.3	60.6	60.0	59.4
34	65.4	64.6	63.8	63.1	62.3	61.6	60.9	60.3	59.6	59.0
35	65.2	64.4	63.6	62.8	62.1	61.4	60.6	59.9	59.3	58.6
36	65.0	64.2	63.4	62.6	61.9	61.1	60.4	59.6	59.0	58.3
37	64.9	64.0	63.2	62.4	61.6	60.9	60.1	59.4	58.7	58.0
38	64.7	63.9	63.0	62.2	61.4	60.6	59.9	59.1	58.4	57.7
39	64.6	63.7	62.9	62.1	61.2	60.4	59.6	58.9	58.1	57.4
40	64.4	63.6	62.7	61.9	61.1	60.2	59.4	58.7	57.9	57.1
41	64.3	63.5	62.6	61.7	60.9	60.1	59.3	58.5	57.7	56.9
42	64.2	63.3	62.5	61.6	60.8	59.9	59.1	58.3	57.5	56.7
43	64.1	63.2	62.4	61.5	60.6	59.8	58.9	58.1	57.3	56.5
44	64.0	63.1	62.2	61.4	60.5	59.6	58.8	57.9	57.1	56.3
45	64.0	63.0	62.2	61.3	60.4	59.5	58.6	57.8	56.9	56.1
46	63.9	63.0	62.1	61.2	60.3	59.4	58.5	57.7	56.8	56.0
47	63.8	62.9	62.0	61.1	60.2	59.3	58.4	57.5	56.7	55.8
48	63.7	62.8	61.9	61.0	60.1	59.2	58.3	57.4	56.5	55.7
49	63.7	62.8	61.8	60.9	60.0	59.1	58.2	57.3	56.4	55.6
50	63.6	62.7	61.8	60.8	59.9	59.0	58.1	57.2	56.3	55.4
51	63.6	62.6	61.7	60.8	59.9	58.9	58.0	57.1	56.2	55.3
52	63.5	62.6	61.7	60.7	59.8	58.9	58.0	57.1	56.1	55.2
53	63.5	62.5	61.6	60.7	59.7	58.8	57.9	57.0	56.1	55.2
54	63.5	62.5	61.6	60.6	59.7	58.8	57.8	56.9	56.0	55.1
55	63.4	62.5	61.5	60.6	59.6	58.7	57.8	56.8	55.9	55.0
56	63.4	62.4	61.5	60.5	59.6	58.7	57.7	56.8	55.9	54.9

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AGES	20	21	22	23	24	25	26	27	28	29
57	63.4	62.4	61.5	60.5	59.6	58.6	57.7	56.7	55.8	54.9
58	63.3	62.4	61.4	60.5	59.5	58.6	57.6	56.7	55.8	54.8
59	63.3	62.3	61.4	60.4	59.5	58.5	57.6	56.7	55.7	54.8
60	63.3	62.3	61.4	60.4	59.5	58.5	57.6	56.6	55.7	54.7
61	63.3	62.3	61.3	60.4	59.4	58.5	57.5	56.6	55.6	54.7
62	63.2	62.3	61.3	60.4	59.4	58.4	57.5	56.5	55.6	54.7
63	63.2	62.3	61.3	60.3	59.4	58.4	57.5	56.5	55.6	54.6
64	63.2	62.2	61.3	60.3	59.4	58.4	57.4	56.5	55.5	54.6
65	63.2	62.2	61.3	60.3	59.3	58.4	57.4	56.5	55.5	54.6
66	63.2	62.2	61.2	60.3	59.3	58.4	57.4	56.4	55.5	54.5
67	63.2	62.2	61.2	60.3	59.3	58.3	57.4	56.4	55.5	54.5
68	63.1	62.2	61.2	60.2	59.3	58.3	57.4	56.4	55.4	54.5
69	63.1	62.2	61.2	60.2	59.3	58.3	57.3	56.4	55.4	54.5
70	63.1	62.2	61.2	60.2	59.3	58.3	57.3	56.4	55.4	54.4
71	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.4	55.4	54.4
72	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.3	55.4	54.4
73	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.3	55.4	54.4
74	63.1	62.1	61.2	60.2	59.2	58.2	57.3	56.3	55.4	54.4
75	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
76	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
77	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
78	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
79	63.1	62.1	61.1	60.2	59.2	58.2	57.2	56.3	55.3	54.3
80	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
81	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
82	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
83	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
84	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
85	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
86	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3
87	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3
88	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3
89	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
90	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
91	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
92	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
93	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
94	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
95	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
96	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
97	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
98	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
99	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
100	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3

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AGES	20	21	22	23	24	25	26	27	28	29
101	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
102	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
103	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
104	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
105	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
106	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
107	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
108	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
109	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
110	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
111	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
112	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
113	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
114	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
115+	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3

AGES	30	31	32	33	34	35	36	37	38	39
30	60.2	59.7	59.2	58.8	58.4	58.0	57.6	57.3	57.0	56.7
31	59.7	59.2	58.7	58.2	57.8	57.4	57.0	56.6	56.3	56.0
32	59.2	58.7	58.2	57.7	57.2	56.8	56.4	56.0	55.6	55.3
33	58.8	58.2	57.7	57.2	56.7	56.2	55.8	55.4	55.0	54.7
34	58.4	57.8	57.2	56.7	56.2	55.7	55.3	54.8	54.4	54.0
35	58.0	57.4	56.8	56.2	55.7	55.2	54.7	54.3	53.8	53.4
36	57.6	57.0	56.4	55.8	55.3	54.7	54.2	53.7	53.3	52.8
37	57.3	56.6	56.0	55.4	54.8	54.3	53.7	53.2	52.7	52.3
38	57.0	56.3	55.6	55.0	54.4	53.8	53.3	52.7	52.2	51.7
39	56.7	56.0	55.3	54.7	54.0	53.4	52.8	52.3	51.7	51.2
40	56.4	55.7	55.0	54.3	53.7	53.0	52.4	51.8	51.3	50.8
41	56.1	55.4	54.7	54.0	53.3	52.7	52.0	51.4	50.9	50.3
42	55.9	55.2	54.4	53.7	53.0	52.3	51.7	51.1	50.4	49.9
43	55.7	54.9	54.2	53.4	52.7	52.0	51.3	50.7	50.1	49.5
44	55.5	54.7	53.9	53.2	52.4	51.7	51.0	50.4	49.7	49.1
45	55.3	54.5	53.7	52.9	52.2	51.5	50.7	50.0	49.4	48.7
46	55.1	54.3	53.5	52.7	52.0	51.2	50.5	49.8	49.1	48.4
47	55.0	54.1	53.3	52.5	51.7	51.0	50.2	49.5	48.8	48.1
48	54.8	54.0	53.2	52.3	51.5	50.8	50.0	49.2	48.5	47.8
49	54.7	53.8	53.0	52.2	51.4	50.6	49.8	49.0	48.2	47.5
50	54.6	53.7	52.9	52.0	51.2	50.4	49.6	48.8	48.0	47.3
51	54.5	53.6	52.7	51.9	51.0	50.2	49.4	48.6	47.8	47.0
52	54.4	53.5	52.6	51.7	50.9	50.0	49.2	48.4	47.6	46.8
53	54.3	53.4	52.5	51.6	50.8	49.9	49.1	48.2	47.4	46.6
54	54.2	53.3	52.4	51.5	50.6	49.8	48.9	48.1	47.2	46.4
55	54.1	53.2	52.3	51.4	50.5	49.7	48.8	47.9	47.1	46.3
56	54.0	53.1	52.2	51.3	50.4	49.5	48.7	47.8	47.0	46.1

AGES	30	31	32	33	34	35	36	37	38	39
57	54.0	53.0	52.1	51.2	50.3	49.4	48.6	47.7	46.8	46.0
58	53.9	53.0	52.1	51.2	50.3	49.4	48.5	47.6	46.7	45.8
59	53.8	52.9	52.0	51.1	50.2	49.3	48.4	47.5	46.6	45.7
60	53.8	52.9	51.9	51.0	50.1	49.2	48.3	47.4	46.5	45.6
61	53.8	52.8	51.9	51.0	50.0	49.1	48.2	47.3	46.4	45.5
62	53.7	52.8	51.8	50.9	50.0	49.1	48.1	47.2	46.3	45.4
63	53.7	52.7	51.8	50.9	49.9	49.0	48.1	47.2	46.3	45.3
64	53.6	52.7	51.8	50.8	49.9	48.9	48.0	47.1	46.2	45.3
65	53.6	52.7	51.7	50.8	49.8	48.9	48.0	47.0	46.1	45.2
66	53.6	52.6	51.7	50.7	49.8	48.9	47.9	47.0	46.1	45.1
67	53.6	52.6	51.7	50.7	49.8	48.8	47.9	46.9	46.0	45.1
68	53.5	52.6	51.6	50.7	49.7	48.8	47.8	46.9	46.0	45.0
69	53.5	52.6	51.6	50.6	49.7	48.7	47.8	46.9	45.9	45.0
70	53.5	52.5	51.6	50.6	49.7	48.7	47.8	46.8	45.9	44.9
71	53.5	52.5	51.6	50.6	49.6	48.7	47.7	46.8	45.9	44.9
72	53.5	52.5	51.5	50.6	49.6	48.7	47.7	46.8	45.8	44.9
73	53.4	52.5	51.5	50.6	49.6	48.6	47.7	46.7	45.8	44.8
74	53.4	52.5	51.5	50.5	49.6	48.6	47.7	46.7	45.8	44.8
75	53.4	52.5	51.5	50.5	49.6	48.6	47.7	46.7	45.7	44.8
76	53.4	52.4	51.5	50.5	49.6	48.6	47.6	46.7	45.7	44.8
77	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.7	45.7	44.8
78	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.6	45.7	44.7
79	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.6	45.7	44.7
80	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.7	44.7
81	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.7	44.7
82	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.6	44.7
83	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.6	44.7
84	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.6	44.7
85	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.7
86	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
87	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
88	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
89	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
90	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
91	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
92	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
93	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
94	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
95	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
96	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
97	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
98	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
99	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
100	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6

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AGES	30	31	32	33	34	35	36	37	38	39
101	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
102	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
103	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
104	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
105	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
106	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
107	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
108	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
109	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
110	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
111	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
112	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
113	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
114	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
115+	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6

AGES	40	41	42	43	44	45	46	47	48	49
40	50.2	49.8	49.3	48.9	48.5	48.1	47.7	47.4	47.1	46.8
41	49.8	49.3	48.8	48.3	47.9	47.5	47.1	46.7	46.4	46.1
42	49.3	48.8	48.3	47.8	47.3	46.9	46.5	46.1	45.8	45.4
43	48.9	48.3	47.8	47.3	46.8	46.3	45.9	45.5	45.1	44.8
44	48.5	47.9	47.3	46.8	46.3	45.8	45.4	44.9	44.5	44.2
45	48.1	47.5	46.9	46.3	45.8	45.3	44.8	44.4	44.0	43.6
46	47.7	47.1	46.5	45.9	45.4	44.8	44.3	43.9	43.4	43.0
47	47.4	46.7	46.1	45.5	44.9	44.4	43.9	43.4	42.9	42.4
48	47.1	46.4	45.8	45.1	44.5	44.0	43.4	42.9	42.4	41.9
49	46.8	46.1	45.4	44.8	44.2	43.6	43.0	42.4	41.9	41.4
50	46.5	45.8	45.1	44.4	43.8	43.2	42.6	42.0	41.5	40.9
51	46.3	45.5	44.8	44.1	43.5	42.8	42.2	41.6	41.0	40.5
52	46.0	45.3	44.6	43.8	43.2	42.5	41.8	41.2	40.6	40.1
53	45.8	45.1	44.3	43.6	42.9	42.2	41.5	40.9	40.3	39.7
54	45.6	44.8	44.1	43.3	42.6	41.9	41.2	40.5	39.9	39.3
55	45.5	44.7	43.9	43.1	42.4	41.6	40.9	40.2	39.6	38.9
56	45.3	44.5	43.7	42.9	42.1	41.4	40.7	40.0	39.3	38.6
57	45.1	44.3	43.5	42.7	41.9	41.2	40.4	39.7	39.0	38.3
58	45.0	44.2	43.3	42.5	41.7	40.9	40.2	39.4	38.7	38.0
59	44.9	44.0	43.2	42.4	41.5	40.7	40.0	39.2	38.5	37.8
60	44.7	43.9	43.0	42.2	41.4	40.6	39.8	39.0	38.2	37.5
61	44.6	43.8	42.9	42.1	41.2	40.4	39.6	38.8	38.0	37.3
62	44.5	43.7	42.8	41.9	41.1	40.3	39.4	38.6	37.8	37.1
63	44.5	43.6	42.7	41.8	41.0	40.1	39.3	38.5	37.7	36.9
64	44.4	43.5	42.6	41.7	40.8	40.0	39.2	38.3	37.5	36.7
65	44.3	43.4	42.5	41.6	40.7	39.9	39.0	38.2	37.4	36.6
66	44.2	43.3	42.4	41.5	40.6	39.8	38.9	38.1	37.2	36.4

AGES	40	41	42	43	44	45	46	47	48	49
67	44.2	43.3	42.3	41.4	40.6	39.7	38.8	38.0	37.1	36.3
68	44.1	43.2	42.3	41.4	40.5	39.6	38.7	37.9	37.0	36.2
69	44.1	43.1	42.2	41.3	40.4	39.5	38.6	37.8	36.9	36.0
70	44.0	43.1	42.2	41.3	40.3	39.4	38.6	37.7	36.8	35.9
71	44.0	43.0	42.1	41.2	40.3	39.4	38.5	37.6	36.7	35.9
72	43.9	43.0	42.1	41.1	40.2	39.3	38.4	37.5	36.6	35.8
73	43.9	43.0	42.0	41.1	40.2	39.3	38.4	37.5	36.6	35.7
74	43.9	42.9	42.0	41.1	40.1	39.2	38.3	37.4	36.5	35.6
75	43.8	42.9	42.0	41.0	40.1	39.2	38.3	37.4	36.5	35.6
76	43.8	42.9	41.9	41.0	40.1	39.1	38.2	37.3	36.4	35.5
77	43.8	42.9	41.9	41.0	40.0	39.1	38.2	37.3	36.4	35.5
78	43.8	42.8	41.9	40.9	40.0	39.1	38.2	37.2	36.3	35.4
79	43.8	42.8	41.9	40.9	40.0	39.1	38.1	37.2	36.3	35.4
80	43.7	42.8	41.8	40.9	40.0	39.0	38.1	37.2	36.3	35.4
81	43.7	42.8	41.8	40.9	39.9	39.0	38.1	37.2	36.2	35.3
82	43.7	42.8	41.8	40.9	39.9	39.0	38.1	37.1	36.2	35.3
83	43.7	42.8	41.8	40.9	39.9	39.0	38.0	37.1	36.2	35.3
84	43.7	42.7	41.8	40.8	39.9	39.0	38.0	37.1	36.2	35.3
85	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.1	36.2	35.2
86	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.1	36.1	35.2
87	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.0	36.1	35.2
88	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.0	36.1	35.2
89	43.7	42.7	41.7	40.8	39.8	38.9	38.0	37.0	36.1	35.2
90	43.7	42.7	41.7	40.8	39.8	38.9	38.0	37.0	36.1	35.2
91	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.2
92	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
93	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
94	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
95	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
96	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
97	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
98	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
99	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
100	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
101	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
102	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
103	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
104	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
105	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
106	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
107	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
108	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
109	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
110	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1

AGES	40	41	42	43	44	45	46	47	48	49
111	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
112	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
113	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
114	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
115+	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1

AGES	50	51	52	53	54	55	56	57	58	59
50	40.4	40.0	39.5	39.1	38.7	38.3	38.0	37.6	37.3	37.1
51	40.0	39.5	39.0	38.5	38.1	37.7	37.4	37.0	36.7	36.4
52	39.5	39.0	38.5	38.0	37.6	37.2	36.8	36.4	36.0	35.7
53	39.1	38.5	38.0	37.5	37.1	36.6	36.2	35.8	35.4	35.1
54	38.7	38.1	37.6	37.1	36.6	36.1	35.7	35.2	34.8	34.5
55	38.3	37.7	37.2	36.6	36.1	35.6	35.1	34.7	34.3	33.9
56	38.0	37.4	36.8	36.2	35.7	35.1	34.7	34.2	33.7	33.3
57	37.6	37.0	36.4	35.8	35.2	34.7	34.2	33.7	33.2	32.8
58	37.3	36.7	36.0	35.4	34.8	34.3	33.7	33.2	32.8	32.3
59	37.1	36.4	35.7	35.1	34.5	33.9	33.3	32.8	32.3	31.8
60	36.8	36.1	35.4	34.8	34.1	33.5	32.9	32.4	31.9	31.3
61	36.6	35.8	35.1	34.5	33.8	33.2	32.6	32.0	31.4	30.9
62	36.3	35.6	34.9	34.2	33.5	32.9	32.2	31.6	31.1	30.5
63	36.1	35.4	34.6	33.9	33.2	32.6	31.9	31.3	30.7	30.1
64	35.9	35.2	34.4	33.7	33.0	32.3	31.6	31.0	30.4	29.8
65	35.8	35.0	34.2	33.5	32.7	32.0	31.4	30.7	30.0	29.4
66	35.6	34.8	34.0	33.3	32.5	31.8	31.1	30.4	29.8	29.1
67	35.5	34.7	33.9	33.1	32.3	31.6	30.9	30.2	29.5	28.8
68	35.3	34.5	33.7	32.9	32.1	31.4	30.7	29.9	29.2	28.6
69	35.2	34.4	33.6	32.8	32.0	31.2	30.5	29.7	29.0	28.3
70	35.1	34.3	33.4	32.6	31.8	31.1	30.3	29.5	28.8	28.1
71	35.0	34.2	33.3	32.5	31.7	30.9	30.1	29.4	28.6	27.9
72	34.9	34.1	33.2	32.4	31.6	30.8	30.0	29.2	28.4	27.7
73	34.8	34.0	33.1	32.3	31.5	30.6	29.8	29.1	28.3	27.5
74	34.8	33.9	33.0	32.2	31.4	30.5	29.7	28.9	28.1	27.4
75	34.7	33.8	33.0	32.1	31.3	30.4	29.6	28.8	28.0	27.2
76	34.6	33.8	32.9	32.0	31.2	30.3	29.5	28.7	27.9	27.1
77	34.6	33.7	32.8	32.0	31.1	30.3	29.4	28.6	27.8	27.0
78	34.5	33.6	32.8	31.9	31.0	30.2	29.3	28.5	27.7	26.9
79	34.5	33.6	32.7	31.8	31.0	30.1	29.3	28.4	27.6	26.8
80	34.5	33.6	32.7	31.8	30.9	30.1	29.2	28.4	27.5	26.7
81	34.4	33.5	32.6	31.8	30.9	30.0	29.2	28.3	27.5	26.6
82	34.4	33.5	32.6	31.7	30.8	30.0	29.1	28.3	27.4	26.6
83	34.4	33.5	32.6	31.7	30.8	29.9	29.1	28.2	27.4	26.5
84	34.3	33.4	32.5	31.7	30.8	29.9	29.0	28.2	27.3	26.5
85	34.3	33.4	32.5	31.6	30.7	29.9	29.0	28.1	27.3	26.4
86	34.3	33.4	32.5	31.6	30.7	29.8	29.0	28.1	27.2	26.4

AGES	50	51	52	53	54	55	56	57	58	59
87	34.3	33.4	32.5	31.6	30.7	29.8	28.9	28.1	27.2	26.4
88	34.3	33.4	32.5	31.6	30.7	29.8	28.9	28.0	27.2	26.3
89	34.3	33.3	32.4	31.5	30.7	29.8	28.9	28.0	27.2	26.3
90	34.2	33.3	32.4	31.5	30.6	29.8	28.9	28.0	27.1	26.3
91	34.2	33.3	32.4	31.5	30.6	29.7	28.9	28.0	27.1	26.3
92	34.2	33.3	32.4	31.5	30.6	29.7	28.8	28.0	27.1	26.2
93	34.2	33.3	32.4	31.5	30.6	29.7	28.8	28.0	27.1	26.2
94	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.1	26.2
95	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.1	26.2
96	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
97	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
98	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
99	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
100	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.1
101	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.1
102	34.2	33.3	32.4	31.4	30.5	29.7	28.8	27.9	27.0	26.1
103	34.2	33.3	32.4	31.4	30.5	29.7	28.8	27.9	27.0	26.1
104	34.2	33.3	32.4	31.4	30.5	29.6	28.8	27.9	27.0	26.1
105	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
106	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
107	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
108	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
109	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
110	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
111	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
112	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
113	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
114	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
115+	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1

AGES	60	61	62	63	64	65	66	67	68	69
60	30.9	30.4	30.0	29.6	29.2	28.8	28.5	28.2	27.9	27.6
61	30.4	29.9	29.5	29.0	28.6	28.3	27.9	27.6	27.3	27.0
62	30.0	29.5	29.0	28.5	28.1	27.7	27.3	27.0	26.7	26.4
63	29.6	29.0	28.5	28.1	27.6	27.2	26.8	26.4	26.1	25.7
64	29.2	28.6	28.1	27.6	27.1	26.7	26.3	25.9	25.5	25.2
65	28.8	28.3	27.7	27.2	26.7	26.2	25.8	25.4	25.0	24.6
66	28.5	27.9	27.3	26.8	26.3	25.8	25.3	24.9	24.5	24.1
67	28.2	27.6	27.0	26.4	25.9	25.4	24.9	24.4	24.0	23.6
68	27.9	27.3	26.7	26.1	25.5	25.0	24.5	24.0	23.5	23.1
69	27.6	27.0	26.4	25.7	25.2	24.6	24.1	23.6	23.1	22.6
70	27.4	26.7	26.1	25.4	24.8	24.3	23.7	23.2	22.7	22.2
71	27.2	26.5	25.8	25.2	24.5	23.9	23.4	22.8	22.3	21.8
72	27.0	26.3	25.6	24.9	24.3	23.7	23.1	22.5	22.0	21.4

AGES	60	61	62	63	64	65	66	67	68	69
73	26.8	26.1	25.4	24.7	24.0	23.4	22.8	22.2	21.6	21.1
74	26.6	25.9	25.2	24.5	23.8	23.1	22.5	21.9	21.3	20.8
75	26.5	25.7	25.0	24.3	23.6	22.9	22.3	21.6	21.0	20.5
76	26.3	25.6	24.8	24.1	23.4	22.7	22.0	21.4	20.8	20.2
77	26.2	25.4	24.7	23.9	23.2	22.5	21.8	21.2	20.6	19.9
78	26.1	25.3	24.6	23.8	23.1	22.4	21.7	21.0	20.3	19.7
79	26.0	25.2	24.4	23.7	22.9	22.2	21.5	20.8	20.1	19.5
80	25.9	25.1	24.3	23.6	22.8	22.1	21.3	20.6	20.0	19.3
81	25.8	25.0	24.2	23.4	22.7	21.9	21.2	20.5	19.8	19.1
82	25.8	24.9	24.1	23.4	22.6	21.8	21.1	20.4	19.7	19.0
83	25.7	24.9	24.1	23.3	22.5	21.7	21.0	20.2	19.5	18.8
84	25.6	24.8	24.0	23.2	22.4	21.6	20.9	20.1	19.4	18.7
85	25.6	24.8	23.9	23.1	22.3	21.6	20.8	20.1	19.3	18.6
86	25.5	24.7	23.9	23.1	22.3	21.5	20.7	20.0	19.2	18.5
87	25.5	24.7	23.8	23.0	22.2	21.4	20.7	19.9	19.2	18.4
88	25.5	24.6	23.8	23.0	22.2	21.4	20.6	19.8	19.1	18.3
89	25.4	24.6	23.8	22.9	22.1	21.3	20.5	19.8	19.0	18.3
90	25.4	24.6	23.7	22.9	22.1	21.3	20.5	19.7	19.0	18.2
91	25.4	24.5	23.7	22.9	22.1	21.3	20.5	19.7	18.9	18.2
92	25.4	24.5	23.7	22.9	22.0	21.2	20.4	19.6	18.9	18.1
93	25.4	24.5	23.7	22.8	22.0	21.2	20.4	19.6	18.8	18.1
94	25.3	24.5	23.6	22.8	22.0	21.2	20.4	19.6	18.8	18.0
95	25.3	24.5	23.6	22.8	22.0	21.1	20.3	19.6	18.8	18.0
96	25.3	24.5	23.6	22.8	21.9	21.1	20.3	19.5	18.8	18.0
97	25.3	24.5	23.6	22.8	21.9	21.1	20.3	19.5	18.7	18.0
98	25.3	24.4	23.6	22.8	21.9	21.1	20.3	19.5	18.7	17.9
99	25.3	24.4	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9
100	25.3	24.4	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9
101	25.3	24.4	23.6	22.7	21.9	21.1	20.2	19.4	18.7	17.9
102	25.3	24.4	23.6	22.7	21.9	21.1	20.2	19.4	18.6	17.9
103	25.3	24.4	23.6	22.7	21.9	21.0	20.2	19.4	18.6	17.9
104	25.3	24.4	23.5	22.7	21.9	21.0	20.2	19.4	18.6	17.8
105	25.3	24.4	23.5	22.7	21.9	21.0	20.2	19.4	18.6	17.8
106	25.3	24.4	23.5	22.7	21.9	21.0	20.2	19.4	18.6	17.8
107	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
108	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
109	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
110	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
111	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
112	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
113	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
114	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
115+	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8

AGES	70	71	72	73	74	75	76	77	78	79
70	21.8	21.3	20.9	20.6	20.2	19.9	19.6	19.4	19.1	18.9
71	21.3	20.9	20.5	20.1	19.7	19.4	19.1	18.8	18.5	18.3
72	20.9	20.5	20.0	19.6	19.3	18.9	18.6	18.3	18.0	17.7
73	20.6	20.1	19.6	19.2	18.8	18.4	18.1	17.8	17.5	17.2
74	20.2	19.7	19.3	18.8	18.4	18.0	17.6	17.3	17.0	16.7
75	19.9	19.4	18.9	18.4	18.0	17.6	17.2	16.8	16.5	16.2
76	19.6	19.1	18.6	18.1	17.6	17.2	16.8	16.4	16.0	15.7
77	19.4	18.8	18.3	17.8	17.3	16.8	16.4	16.0	15.6	15.3
78	19.1	18.5	18.0	17.5	17.0	16.5	16.0	15.6	15.2	14.9
79	18.9	18.3	17.7	17.2	16.7	16.2	15.7	15.3	14.9	14.5
80	18.7	18.1	17.5	16.9	16.4	15.9	15.4	15.0	14.5	14.1
81	18.5	17.9	17.3	16.7	16.2	15.6	15.1	14.7	14.2	13.8
82	18.3	17.7	17.1	16.5	15.9	15.4	14.9	14.4	13.9	13.5
83	18.2	17.5	16.9	16.3	15.7	15.2	14.7	14.2	13.7	13.2
84	18.0	17.4	16.7	16.1	15.5	15.0	14.4	13.9	13.4	13.0
85	17.9	17.3	16.6	16.0	15.4	14.8	14.3	13.7	13.2	12.8
86	17.8	17.1	16.5	15.8	15.2	14.6	14.1	13.5	13.0	12.5
87	17.7	17.0	16.4	15.7	15.1	14.5	13.9	13.4	12.9	12.4
88	17.6	16.9	16.3	15.6	15.0	14.4	13.8	13.2	12.7	12.2
89	17.6	16.9	16.2	15.5	14.9	14.3	13.7	13.1	12.6	12.0
90	17.5	16.8	16.1	15.4	14.8	14.2	13.6	13.0	12.4	11.9
91	17.4	16.7	16.0	15.4	14.7	14.1	13.5	12.9	12.3	11.8
92	17.4	16.7	16.0	15.3	14.6	14.0	13.4	12.8	12.2	11.7
93	17.3	16.6	15.9	15.2	14.6	13.9	13.3	12.7	12.1	11.6
94	17.3	16.6	15.9	15.2	14.5	13.9	13.2	12.6	12.0	11.5
95	17.3	16.5	15.8	15.1	14.5	13.8	13.2	12.6	12.0	11.4
96	17.2	16.5	15.8	15.1	14.4	13.8	13.1	12.5	11.9	11.3
97	17.2	16.5	15.8	15.1	14.4	13.7	13.1	12.5	11.9	11.3
98	17.2	16.4	15.7	15.0	14.3	13.7	13.0	12.4	11.8	11.2
99	17.2	16.4	15.7	15.0	14.3	13.6	13.0	12.4	11.8	11.2
100	17.1	16.4	15.7	15.0	14.3	13.6	12.9	12.3	11.7	11.1
101	17.1	16.4	15.6	14.9	14.2	13.6	12.9	12.3	11.7	11.1
102	17.1	16.4	15.6	14.9	14.2	13.5	12.9	12.2	11.6	11.0
103	17.1	16.3	15.6	14.9	14.2	13.5	12.9	12.2	11.6	11.0
104	17.1	16.3	15.6	14.9	14.2	13.5	12.8	12.2	11.6	11.0
105	17.1	16.3	15.6	14.9	14.2	13.5	12.8	12.2	11.5	10.9
106	17.1	16.3	15.6	14.8	14.1	13.5	12.8	12.2	11.5	10.9
107	17.0	16.3	15.6	14.8	14.1	13.4	12.8	12.1	11.5	10.9
108	17.0	16.3	15.5	14.8	14.1	13.4	12.8	12.1	11.5	10.9
109	17.0	16.3	15.5	14.8	14.1	13.4	12.8	12.1	11.5	10.9
110	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.5	10.9
111	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.5	10.8
112	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.5	10.8
113	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.4	10.8

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AGES	70	71	72	73	74	75	76	77	78	79
114	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.4	10.8
115+	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.4	10.8

AGES	80	81	82	83	84	85	86	87	88	89
80	13.8	13.4	13.1	12.8	12.6	12.3	12.1	11.9	11.7	11.5
81	13.4	13.1	12.7	12.4	12.2	11.9	11.7	11.4	11.3	11.1
82	13.1	12.7	12.4	12.1	11.8	11.5	11.3	11.0	10.8	10.6
83	12.8	12.4	12.1	11.7	11.4	11.1	10.9	10.6	10.4	10.2
84	12.6	12.2	11.8	11.4	11.1	10.8	10.5	10.3	10.1	9.9
85	12.3	11.9	11.5	11.1	10.8	10.5	10.2	9.9	9.7	9.5
86	12.1	11.7	11.3	10.9	10.5	10.2	9.9	9.6	9.4	9.2
87	11.9	11.4	11.0	10.6	10.3	9.9	9.6	9.4	9.1	8.9
88	11.7	11.3	10.8	10.4	10.1	9.7	9.4	9.1	8.8	8.6
89	11.5	11.1	10.6	10.2	9.9	9.5	9.2	8.9	8.6	8.3
90	11.4	10.9	10.5	10.1	9.7	9.3	9.0	8.6	8.3	8.1
91	11.3	10.8	10.3	9.9	9.5	9.1	8.8	8.4	8.1	7.9
92	11.2	10.7	10.2	9.8	9.3	9.0	8.6	8.3	8.0	7.7
93	11.1	10.6	10.1	9.6	9.2	8.8	8.5	8.1	7.8	7.5
94	11.0	10.5	10.0	9.5	9.1	8.7	8.3	8.0	7.6	7.3
95	10.9	10.4	9.9	9.4	9.0	8.6	8.2	7.8	7.5	7.2
96	10.8	10.3	9.8	9.3	8.9	8.5	8.1	7.7	7.4	7.1
97	10.7	10.2	9.7	9.2	8.8	8.4	8.0	7.6	7.3	6.9
98	10.7	10.1	9.6	9.2	8.7	8.3	7.9	7.5	7.1	6.8
99	10.6	10.1	9.6	9.1	8.6	8.2	7.8	7.4	7.0	6.7
100	10.6	10.0	9.5	9.0	8.5	8.1	7.7	7.3	6.9	6.6
101	10.5	10.0	9.4	9.0	8.5	8.0	7.6	7.2	6.9	6.5
102	10.5	9.9	9.4	8.9	8.4	8.0	7.5	7.1	6.8	6.4
103	10.4	9.9	9.4	8.8	8.4	7.9	7.5	7.1	6.7	6.3
104	10.4	9.8	9.3	8.8	8.3	7.9	7.4	7.0	6.6	6.3
105	10.4	9.8	9.3	8.8	8.3	7.8	7.4	7.0	6.6	6.2
106	10.3	9.8	9.2	8.7	8.2	7.8	7.3	6.9	6.5	6.2
107	10.3	9.8	9.2	8.7	8.2	7.7	7.3	6.9	6.5	6.1
108	10.3	9.7	9.2	8.7	8.2	7.7	7.3	6.8	6.4	6.1
109	10.3	9.7	9.2	8.7	8.2	7.7	7.2	6.8	6.4	6.0
110	10.3	9.7	9.2	8.6	8.1	7.7	7.2	6.8	6.4	6.0
111	10.3	9.7	9.1	8.6	8.1	7.6	7.2	6.8	6.3	6.0
112	10.2	9.7	9.1	8.6	8.1	7.6	7.2	6.7	6.3	5.9
113	10.2	9.7	9.1	8.6	8.1	7.6	7.2	6.7	6.3	5.9
114	10.2	9.7	9.1	8.6	8.1	7.6	7.1	6.7	6.3	5.9
115+	10.2	9.7	9.1	8.6	8.1	7.6	7.1	6.7	6.3	5.9

AGES	90	91	92	93	94	95	96	97	98	99
90	7.8	7.6	7.4	7.2	7.1	6.9	6.8	6.6	6.5	6.4
91	7.6	7.4	7.2	7.0	6.8	6.7	6.5	6.4	6.3	6.1

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AGES	90	91	92	93	94	95	96	97	98	99
92	7.4	7.2	7.0	6.8	6.6	6.4	6.3	6.1	6.0	5.9
93	7.2	7.0	6.8	6.6	6.4	6.2	6.1	5.9	5.8	5.6
94	7.1	6.8	6.6	6.4	6.2	6.0	5.9	5.7	5.6	5.4
95	6.9	6.7	6.4	6.2	6.0	5.8	5.7	5.5	5.4	5.2
96	6.8	6.5	6.3	6.1	5.9	5.7	5.5	5.3	5.2	5.0
97	6.6	6.4	6.1	5.9	5.7	5.5	5.3	5.2	5.0	4.9
98	6.5	6.3	6.0	5.8	5.6	5.4	5.2	5.0	4.8	4.7
99	6.4	6.1	5.9	5.6	5.4	5.2	5.0	4.9	4.7	4.5
100	6.3	6.0	5.8	5.5	5.3	5.1	4.9	4.7	4.5	4.4
101	6.2	5.9	5.6	5.4	5.2	5.0	4.8	4.6	4.4	4.2
102	6.1	5.8	5.5	5.3	5.1	4.8	4.6	4.4	4.3	4.1
103	6.0	5.7	5.4	5.2	5.0	4.7	4.5	4.3	4.1	4.0
104	5.9	5.6	5.4	5.1	4.9	4.6	4.4	4.2	4.0	3.8
105	5.9	5.6	5.3	5.0	4.8	4.5	4.3	4.1	3.9	3.7
106	5.8	5.5	5.2	4.9	4.7	4.5	4.2	4.0	3.8	3.6
107	5.8	5.4	5.1	4.9	4.6	4.4	4.2	3.9	3.7	3.5
108	5.7	5.4	5.1	4.8	4.6	4.3	4.1	3.9	3.7	3.5
109	5.7	5.3	5.0	4.8	4.5	4.3	4.0	3.8	3.6	3.4
110	5.6	5.3	5.0	4.7	4.5	4.2	4.0	3.8	3.5	3.3
111	5.6	5.3	5.0	4.7	4.4	4.2	3.9	3.7	3.5	3.3
112	5.6	5.3	4.9	4.7	4.4	4.1	3.9	3.7	3.5	3.2
113	5.6	5.2	4.9	4.6	4.4	4.1	3.9	3.6	3.4	3.2
114	5.6	5.2	4.9	4.6	4.3	4.1	3.9	3.6	3.4	3.2
115+	5.5	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.4	3.1

AGES	100	101	102	103	104	105	106	107	108	109
100	4.2	4.1	3.9	3.8	3.7	3.5	3.4	3.3	3.3	3.2
101	4.1	3.9	3.7	3.6	3.5	3.4	3.2	3.1	3.1	3.0
102	3.9	3.7	3.6	3.4	3.3	3.2	3.1	3.0	2.9	2.8
103	3.8	3.6	3.4	3.3	3.2	3.0	2.9	2.8	2.7	2.6
104	3.7	3.5	3.3	3.2	3.0	2.9	2.7	2.6	2.5	2.4
105	3.5	3.4	3.2	3.0	2.9	2.7	2.6	2.5	2.4	2.3
106	3.4	3.2	3.1	2.9	2.7	2.6	2.4	2.3	2.2	2.1
107	3.3	3.1	3.0	2.8	2.6	2.5	2.3	2.2	2.1	2.0
108	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	1.9	1.8
109	3.2	3.0	2.8	2.6	2.4	2.3	2.1	2.0	1.8	1.7
110	3.1	2.9	2.7	2.5	2.3	2.2	2.0	1.9	1.7	1.6
111	3.1	2.9	2.7	2.5	2.3	2.1	1.9	1.8	1.6	1.5
112	3.0	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.5	1.4
113	3.0	2.8	2.6	2.4	2.2	2.0	1.8	1.6	1.5	1.3
114	3.0	2.7	2.5	2.3	2.1	1.9	1.8	1.6	1.4	1.3
115+	2.9	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.4	1.2

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AGES `	110	111	112	113	114	115+
110	1.5	1.4	1.3	1.2	1.1	1.1
111	1.4	1.2	1.1	1.1	1.0	1.0
112	1.3	1.1	1.0	1.0	1.0	1.0
113	1.2	1.1	1.0	1.0	1.0	1.0
114	1.1	1.0	1.0	1.0	1.0	1.0
115+	1.1	1.0	1.0	1.0	1.0	1.0

Q-4. May the tables under this section be changed?

A-4. The Single Life Table, Uniform Lifetime Table and Joint and Last Survivor Table provided in A-1 through A-3 of this section may be changed 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.

SPRING 2012 UPDATE – ESTATE AND INCOME TAX PLANNING WITH RETIREMENT PLANS AND IRAs

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1. Near miss! On February 7, 2012, Senator Max Baucus of the Senate Finance Committee introduced legislation to all but eliminate "stretch IRAs". Here is what the legislation would have done:

- Following death, the entire remaining interest in an IRA or qualified retirement plan must be distributed by the end of the fifth year following the account holder's death. The only exceptions are for beneficiaries who are:
  - Surviving spouse,
  - Disabled (or chronically ill),
  - An individual who is not more than 10 years younger than the account holder; or,
  - A minor child. (However, once the child reaches the age of majority, the five year rule would kick in.)
- Note that a "Q-Tip" or other trust for a surviving spouse is not an exception.
- The rationale for the proposed legislation was simple: The tax breaks for IRAs and retirement plans were intended to create ***retirement benefits*** not an estate planning vehicle.

- If the proposal were enacted, the new law would frustrate those who converted traditional IRAs to Roth IRAs as the tax-free growth period for the Roth IRA would be cut short eliminating the long period of tax-free growth the taxpayer believed the family could take advantage of following the conversion.
- Fortunately, the act to which the legislation was part of was dropped. Be warned, however, it could come back.

2. Bankruptcy Exemption for Inherited IRA Upheld. For some reason which I cannot fathom, a bankruptcy court in Texas concluded in a 2010 decision that an inherited IRA is not protected under the federal bankruptcy protection available to IRAs. In re: Chilton (Bankr. Ct, TX 35 2010). Fortunately, the Fifth Circuit reversed stating that the Bankruptcy Code protection for IRAs extends to inherited IRAs as the exemption of Bankruptcy Code §522(b)(4)(C) is available for "any" IRA. Chilton v. Moser, (2012, CA5) 2012 WL 762924.

3. Not Exactly Ground Breaking . . . but Helpful. (PLR 201208039). The account holder died after her required beginning date naming her estate as beneficiary of the IRA. The estate poured over to a trust and the trust ultimately was to be distributed to four children.

   The four children wanted to divide the IRA into four separate inherited IRAs; one for each child.

   The IRS approved the division by IRA-to-IRA transfer and the creation of the four inherited IRAs on a tax-free basis.

   However, because the estate was the designated beneficiary, the account holder is treated as having died without a designated beneficiary meaning that each of the four

inherited IRAs must be distributed by calculating RMDs based on the account holder's life expectancy.

4. Non-Spouse Rollover to Marital Trust. (PLR 201203033) The decedent designated a marital trust as beneficiary of a qualified retirement plan account. The decedent's wife was the only beneficiary of the trust during her lifetime and, thereafter, the trust is to split into two trusts; one for each of the decedent's children. As to one child's trust, the child was given the power to appoint to anyone other than himself, his estate or the creditors of either.

Prior to September 30 of the calendar year following the decedent's death, the child partially released his power of appointment (releasing the ability to appoint to any non-individual or any individual older than the surviving spouse).

Here is what the IRS concluded:

- The trust is a qualified trust.
- The beneficiaries of the trust will not include individuals older than the surviving spouse.
- Because the trust is a qualified trust, the non-spouse rollover rules allow for the creation of an inherited IRA to receive a direct distribution of the retirement plan account. The inherited IRA will be f/b/o the marital trust.
- RMDs from the inherited IRA will be computed with reference to the spouse's life expectancy.