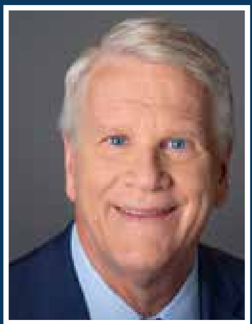
2022 Advisor Symposium

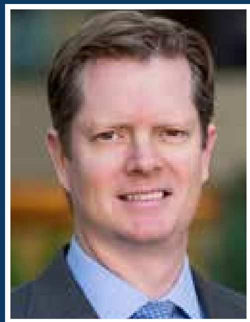
Issues of Interest to Advisors Today



Greg Holmgren, CLU®, ChFC®
Corporate Vice President
New York Life Insurance Company

Christopher Hoyt, JD
Professor of Law
University of Missouri Kansas City
School of Law

Robert S. Keebler
CPA/PFS, MST, AEP®
(Distinguished)
Keebler & Associates, LLP



R. Matthew Pate, JD, LL.M.
Corporate Vice President
New York Life Insurance Company

Resource Guide

Welcome and introduction

Welcome to the 2022 Advisor Symposium, a nationwide educational event designed for accountants, attorneys, trust officers, and other legal and financial service professionals who work with New York Life agents to serve clients' complex estate, business, and retirement planning needs.

This annual program, produced by The Nautilus Group®, a service of New York Life Insurance Company, is a result of our commitment to providing our industry colleagues with informative resources to help navigate the ever-changing income tax planning and regulatory environment.

The experienced and insightful lineup of presenters will provide you with practical knowledge and actionable ideas that you can begin to use immediately as you address your clients' sophisticated financial objectives in collaboration with New York Life agents.

Thank you for joining us. We hope you will find the Advisor Symposium to be time well spent.

Program agenda

Host: Heather L. Davis, JD, CLU®, ChFC®, CAP®

Program Times (Eastern)	Presenter	Title
1:00 - 1:30 pm	Greg Holmgren	Fiduciary Responsibility for Existing Policies
1:30 - 1:55 pm	Robert Keebler	The SECURE Act Regulations
1:55 - 2:20 pm	Christopher Hoyt	Strategies for Inherited Retirement Accounts
2:20 - 2:35 pm	*Break*	
2:35 - 3:00 pm	Robert Keebler	Clawback: Preparing for the "Double Exemption" Sunset
3:00 - 3:25 pm	Matt Pate	Unlocking the Mysteries of Split-Dollar Life Insurance
3:25 - 3:40 pm	*Break*	
3:40 - 4:05 pm	Christopher Hoyt	Using Tax-Exempt CRTs to "Stretch" an Inherited IRA
4:05 - 4:30 pm	Greg Holmgren	Using Life Insurance to Accomplish Estate Objectives
4:30 p.m.	*Adjourn*	

Resource Guide contents

Presenter bios

Heather L. Davis, JD, CLU®, ChFC®, CAP®
Corporate Vice President, The Nautilus Group®

Heather has been with New York Life since 1999. She leads the marketing, meetings, and Model Office teams for The Nautilus Group and oversees the Center of Influence initiative for New York Life, where she serves as executive director and host of the Advisor Symposium and the Advisor Webinar series. She graduated Phi Beta Kappa from the University of Nebraska where she received both her Bachelor of Arts and Juris Doctor degrees. Heather earned her CLU®, ChFC®, and CAP® designations from The American College of Financial Services and is past-president of the college's Alumni Association. She is a member of the Texas State Bar Association.

Greg Holmgren, CLU®, ChFC®
Corporate Vice President, New York Life Insurance Co.

Greg Holmgren is the Advanced Agent Development Officer for New York Life. He leads a team that works with top agents, their clients, and their clients' advisors to enable those clients to achieve their specific financial goals and solve related obstacles. He speaks to groups around the country about financial strategies and key planning issues that impact their lives. With four decades of insurance industry experience, 37 years of which have been in the employ of New York Life, he brings a wealth of applicable knowledge to every situation. Greg holds a Bachelor of Arts degree from Wheaton College in Wheaton, Illinois.

Christopher R. Hoyt, JD
Professor of Law, University of Missouri - Kansas City School of Law

Christopher Hoyt is a professor of law at the University of Missouri Kansas City School of Law where he teaches courses in the area of federal income taxation and business organizations. He received an undergraduate degree in economics from Northwestern University and dual law and accounting degrees from the University of Wisconsin. Chris has served as the Chair of the American Bar Association's Committee on Charitable Organizations (Section of Trusts and Estates) and is on the editorial board of *Trusts and Estates* magazine. He is an ACTEC fellow, has been designated by his peers as a "Best Lawyer," and was elected to the Estate Planning Hall of Fame by the National Association of Estate Planners & Councils. He is a frequent speaker at legal and educational programs and has been quoted in numerous publications, including *The Wall Street Journal*, *Forbes*, *MONEY Magazine*, *The New York Times*, and *The Washington Post*.

Robert S. Keebler, CPA/PFS, MST, AEP® (Distinguished)
Partner, Keebler & Associates, LLP

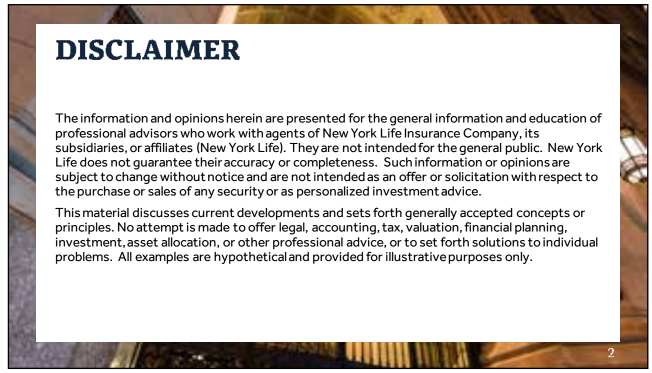
Robert Keebler is a recipient of the prestigious Accredited Estate Planners (Distinguished) award from the National Association of Estate Planners & Councils. He has been named by *CPA Magazine* as one of the Top 100 Most Influential Practitioners in the United States and one of the Top 40 Tax Advisors to Know During a Recession. His practice includes family wealth transfer and preservation planning, charitable giving, retirement distribution planning, and estate administration. Bob frequently represents clients before the National Office of the Internal Revenue Service in the private letter ruling process and in estate, gift, and income tax examinations and appeals, and he has received more than 250 favorable private letter rulings including several key rulings of "first impression." He is the author of over 100 articles and columns and is the editor, author, or coauthor of many books and treatises on wealth transfer and taxation. Bob has been a speaker at national estate planning and tax seminars for more than 20 years and is a featured presenter for New York Life's advisor events.

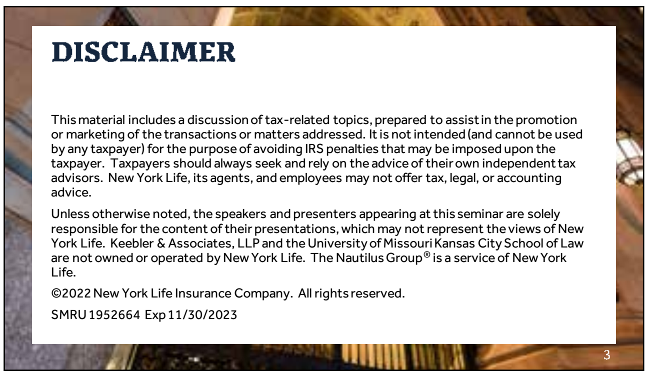
R. Matthew Pate, JD, LL.M.
Corporate Vice President, The Nautilus Group®

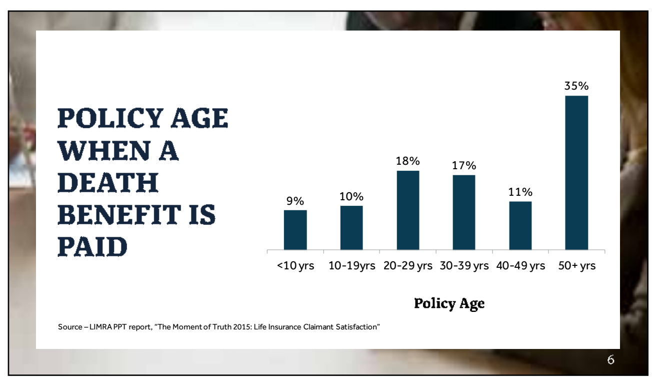
Matt leads a team that provides in depth analysis of legal and tax developments relevant to client planning for a select group of New York Life's top financial professionals to support the complex planning needs of their high net worth clients. He has extensive experience in sophisticated estate planning, business succession, closely held businesses, life insurance, asset protection, and charitable planning techniques. Matt facilitates agent and advisor communication with clients through objective-centric and data-driven customized planning analyses and develops sophisticated financial and tax models to evaluate the efficacy of various planning strategies. He received his Master's in Law in Taxation from SMU's Dedman School of Law, his Juris Doctorate from the University of Texas School of Law, where he served as Executive Editor of the *Texas Review of Law and Politics*, and his undergraduate degree from Georgetown University, majoring in accounting, finance, and international business.

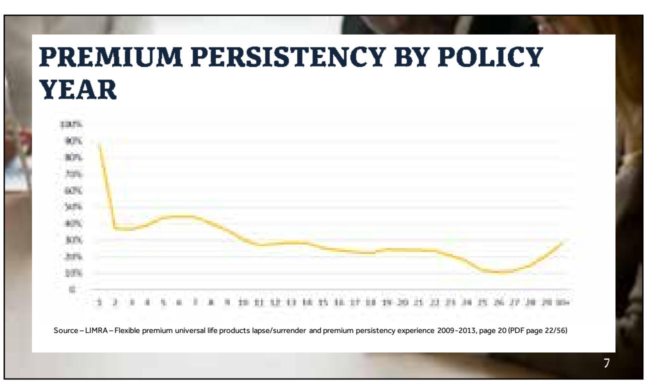
Visit us at NYLAdvisors.com

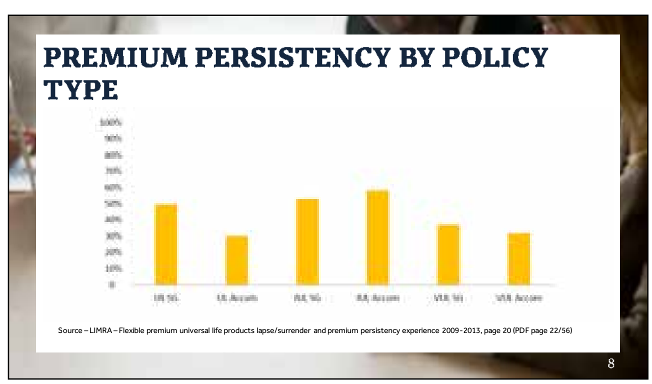
Program slides











THE "HIDDEN" ASSUMPTIONS

"Get along with the grantor and all is well."

- Trustee may think working for grantor but accountable to beneficiary.

THE "HIDDEN" ASSUMPTIONS

"Interest rates will stay the same."

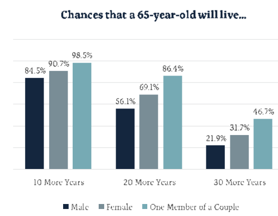
- Most policies placed more than 10 or more years ago were designed to benefit from higher interest rate.
- No action now, may require higher premiums later.
  - Will money be available?
  - Will gifting be available to transfer funds to trust?

LONGEVITY IS THE KEY WORD

- When buying policy, longevity of the:
  - Insured,
  - Policy, and
  - Life insurance provider.
- Responsible fiduciary must synchronize duration of insured, policy, and provider:
  - Looked at individually.
  - Coordinated together.
  - Assessed on a regular basis.
- How long does policy need to last?

LONGEVITY OF A PERSON

- Starting point – life expectancy:
  - Expected number of years of life remaining at given age based upon average.
- Actual number of years remaining varies widely.
- Selecting the right policy not based on insured's life expectancy, but how long insured might live.



Source: Annuity 2000 Basic Mortality Table; projected with Scale G.

QUESTIONS ABOUT THE INSURED

- Do you know the insured's life expectancy?
- Do you know what the chances are of the insured living beyond his/her life expectancy?
- Have you reviewed how long the policy is projected to stay in force?
- If the policy ends, would your client qualify for new coverage?

LONGEVITY OF A POLICY

- Life insurance intended to be in force at death.
- Policy purchased based on assumptions in force at that time.
- In real life, circumstances change, which may alter expected results.
- Fiduciary must continually measure performance by actual results.

FAQS ABOUT A POLICY

- How accurate are illustrations?
  - Illustrations based on assumptions.
  - Actual experience may be different than illustrated projections.
- What would cause the policy to terminate before your client dies?
  - Type of policy.
  - Assumptions used.
- What assumptions were made for the policy?

WHY WOULD TERM INSURANCE END?

Policy designed to end after term of years.	Premiums not affordable.	Premiums not paid.

WHY WOULD A WHOLE LIFE INSURANCE POLICY END?

Premiums not paid.

- Whole life policies have non-forfeiture options.
- Default option varies by company.
  - Reduced paid-up policy – reduced face amount.
  - Extended term policy – same face amount for a period of years.

Loans taken, interest due not paid, interest and loans exceed available cash value.*

Loans taken, interest due not paid, interest and loans exceed available cash value.*

* The cash value in a life insurance policy is accessed through policy loans, which accrue interest at the current rate, and withdrawals. Loans and withdrawals will decrease the cash surrender value and death benefit.

17

WHY WOULD A UNIVERSAL LIFE INSURANCE POLICY END?

Two types of coverage:

- Guaranteed UL.*
- Non-guaranteed UL.

Non-guaranteed UL

- Three elements:
  - Premiums,
  - Crediting rate, and
  - Mortality charges.
- Policy no longer has enough cash value to pay monthly insurance charges.

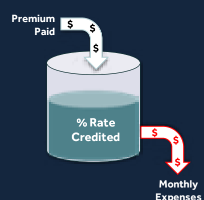
* All guarantees are subject to the claims paying ability of the issuing company.

18

WHY WOULD A UNIVERSAL LIFE INSURANCE POLICY END?

Most policies originally designed to endure, but something changes:

- Less premium paid.
- Lower crediting rate than expected.
- Higher expenses than expected.



19

QUESTIONS ABOUT THE POLICY

- When was the last time the life policy was reviewed?
- At current levels of interest, charges, and premium payments, how long will your client's policy stay in force?
- Have any premium payments been late, reduced, or missed?
- Have any loans or cash withdrawals been taken?

20

QUESTIONS ABOUT THE POLICY

- Will the death benefit be jeopardized or lost if cash is withdrawn or borrowed?
- What guarantees are there that the policy will be around when the beneficiaries need it the most?
- Is the policy subject to dramatic market fluctuations?

21

QUESTIONS ABOUT THE POLICY

For term insurance policies:

- Will the policy remain affordable as long as you need it?
- Are there conversion privileges to a competitive permanent product?

22

LONGEVITY OF A LIFE INSURANCE PROVIDER

Why are ratings important?

What if insurance provider's ratings are downgraded?

What if the insurance company has changed because of sale?

23

QUESTIONS ABOUT INSURANCE PROVIDER

- Has the financial strength of the insurance company changed?
- What is the current insurance provider's rating/financial outlook?
- Does the insurance provider have an adequate surplus of assets?
- What is the investment policy for the provider's general account assets?

24

NEXT STEPS

- Review questions regarding the insurer.
- Research & analyze the policy.
- Determine if policy meets beneficiaries' objectives and trustee's fiduciary responsibilities.
- Adapt or change policy to realign with your beneficiaries' goals.
- Review the policy annually.

25

THE SECURE ACT REGULATIONS

Post-mortem distributions after the proposed regulations.

Robert S. Keebler, CPA/PFS, MST, AEP® (Distinguished)
Keebler & Associates, LLP

SECURE ACT PROPOSED REGULATIONS

Effective date:

- The new proposed regulations apply to distributions on or after January 1, 2022.
- Recall, taxpayers were to calculate 2021 distributions by applying the existing regulations and a reasonable, good faith interpretation of the SECURE Act.

27

DEATH BEFORE REQUIRED BEGINNING DATE (RBD)

§1.401(A)(9)-3

28

DEATH BEFORE RBD

Treas. Reg. §§1.401(a)(9)-3(c)(2),(5)

Five-year rule – proposed regulations:

- Full distribution by the end of the calendar year that includes the fifth anniversary of death (e.g., 2022 deaths = 12/31/27 liquidation).
- Pre-2020 deaths can disregard the 2020 calendar year when determining the fifth anniversary (due to corona-virus related relief).
- This rule applies if there's no qualified designated beneficiary.

29

DEATH BEFORE RBD

Treas. Reg. §§1.401(a)(9)-3(c)(3),(5)

Ten-year rule – proposed regulations:

- Full distribution by the end of the calendar year that includes the tenth anniversary of death (e.g., 2021 deaths = 12/31/31 liquidation).
- This rule applies if there is a qualified designated beneficiary who is not an eligible designated beneficiary.

30

DEATH BEFORE RBD

Treas. Reg. §§1.401(a)(9)-3(d), (e)

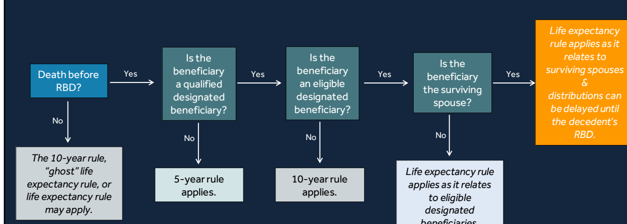
Surviving spouse as beneficiary – proposed regulations:

- Commencement of distributions can be delayed under the end of the calendar year in which the decedent would have reached age 72 (age 70½ if the decedent was born before July 1, 1949).
- If the surviving spouse is the employee's sole beneficiary and dies after the employee, but before distributions commence or should have (due to the above) then the 5-year or 10-year rule applies, and date of death of the surviving spouse is used to determine when the IRA must be fully distributed.
- If the surviving spouse remarries and then dies before receiving distributions, distributions cannot be further delayed.

31

DEATH BEFORE RBD

§1.401(a)(9)-3 Summary



32

DETERMINATION OF THE DESIGNATED BENEFICIARY (DB)

§1.401(A)(9)-4

33

DETERMINATION OF THE DB

Treas. Reg. §§1.401(a)(9)-4(a),(b)

General rules in the proposed regulations:

- A beneficiary need not be specified by name, provided the beneficiary is identifiable – for example: "Children in equal shares" is OK.
- A beneficiary can be designated by default election provided by the custodian (plan) agreement or by affirmative election.
- A qualified Designated Beneficiary must be an individual or an individual who is an identifiable beneficiary of a see-through trust; it cannot be an estate, for example.
- A named beneficiary can or must be disregarded in certain circumstances.

34

DETERMINATION OF THE DB

Treas. Reg. §§1.401(a)(9)-4(c)

When can a designated beneficiary be disregarded:

- A designated beneficiary who executes a qualified disclaimer within 9 months of death can be disregarded.
- A beneficiary who disclaims before September 30 of the calendar year following the calendar year of death, but not within 9 months of death, remains a designated beneficiary.
- A beneficiary who receives consideration in exchange for their disclaimer, remains a designated beneficiary.
- A charity named as beneficiary can be disregarded if their interest is satisfied by September 30 of the calendar year following the calendar year of death.
- A surviving spouse treated as predeceasing under a simultaneous death provision can be disregarded as a beneficiary.
- A beneficiary who dies before September 30 of the calendar following the calendar year of death remains a beneficiary absent specific events.

35

ELIGIBLE DB - DEFINED

IRC §401(a)(9)(E)(ii); Treas. Reg. §1.401(a)(9)-4(e)(1)

Added by the SECURE Act, IRC §401(a)(9)(E)(ii) creates a new concept and exception to the 10-year rule, the eligible designated beneficiary.

This class of beneficiaries includes designated beneficiaries who are:

- The surviving spouse of the employee.
- A child of the employee who has not yet reached the age of majority.
- Disabled.
- Chronically ill.
- Not more than 10 years younger than the employee.

36

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)

The proposed regulations retain:

- The see-through concept to identify beneficiaries.
- The conduit and accumulation trust concept.
- The four requirements for a trust to be a qualified designated beneficiary.

The proposed regulations also provide additional guidance regarding identifying beneficiaries with new fact pattern examples.

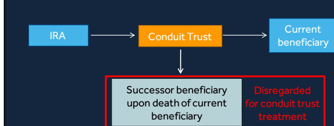
37

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)(3)(iii)

Conduit trusts allowed terms for certain accumulations.

A trust will not fail to be treated as a conduit trust merely because the trust terms requiring the direct payment of amounts received from the plan do not apply after the death of all the current beneficiaries.



38

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)(4)

Multiple trust arrangements

If a beneficiary of a see-through trust is another trust, the beneficiaries of the second trust will be treated as beneficiaries of the first trust, provided the second trust is a qualified designated beneficiary.

39

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)(5)

Identifiability of trust beneficiaries:

- Generally, it must be possible to identify each person designated by the employee to receive retirement plan assets.
- However, the proposed regulations provide some relief:
  - An employee can name a class of individuals as the beneficiary.
  - And now the addition of another member of that class will not fail the identifiability requirements.
  - For example, grandchildren can be named as a class and the birth of another grandchild will not pose a problem.

40

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)(5)(ii)(A)

Powers of Appointment:

- Generally, if an individual holds a power of appointment over the retirement assets, it creates an identifiability problem.
- However, the proposed regulations provide relief:
  - Power to name a non-identifiable beneficiary doesn't cause the trust to fail the Qualified Designated Beneficiary (QDB) requirements.
  - If the power is exercised by September 30 in the calendar year following the calendar year of death, the appointed beneficiaries are designated beneficiaries (DBs).
  - The power can also be restricted by September 30 to a group of beneficiaries which will then be treated as DBs.
  - If the power is not exercised (or restricted) by September 30, then the taker in default is treated as the DB.

41

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)(5)(ii)(B)

Powers of Appointment:

- If a POA adds a new beneficiary after September 30 of the calendar year following the calendar year of death, that added beneficiary is considered a DB.
- If the added beneficiary requires a full distribution, the distribution must occur by the end of the calendar year following the calendar year in which the beneficiary was added.

42

TRUSTS AS BENEFICIARIES

Treas. Reg. §1.401(a)(9)-4(f)(5)(iii)(A)

Reformation & Decanting:

- The proposed regulations provide that a see-through trust will not fail to satisfy the identifiability requirements if state law permits the trust to be modified after death (and the terms are modified after the death to change beneficiaries).
- If a beneficiary is removed by September 30 of the calendar year following the calendar year of the employee's death, the beneficiary is simply disregarded.
- A beneficiary added by September 30 will also be considered a beneficiary for the see-through rules.

43

REQUIRED MINIMUM DISTRIBUTIONS FROM DEFINED CONTRIBUTION PLANS

§1.401(A)(9)-5

44

POST-MORTEM DISTRIBUTIONS

Treas. Reg. §1.401(a)(9)-5(d)

Death on or after the RBD:

- Designated beneficiary – the applicable denominator is the greater of:
  - The DB's remaining life expectancy.
  - The decedent's remaining life expectancy ("Ghost" life expectancy rule).
- No designated beneficiary – the applicable denominator is the decedent's remaining life expectancy ("Ghost" life expectancy rule).
- All life expectancies are determined using the single life table for this purpose.
  - The decedent's remaining life expectancy is determined in the calendar year of death and reduced by one in each subsequent year (subtract-one method).
  - A non-spouse DB's life expectancy is also determined in the calendar year of death and reduced by one in each subsequent year (subtract-one method).

45

POST-MORTEM DISTRIBUTIONS

Treas. Reg. §1.401(a)(9)(E)(ii)(IV)

The general rules are maintained.

	Eligible DB	Qualified DB	Non-Qualified DB
Death before RBD	EBD's Life Expectancy Annual RMDs	10-Year Rule *(No Annual RMDs)*	5-Year Rule *(No Annual RMDs)*
Death after RBD	EBD's Life Expectancy Annual RMDs	Life Expectancy Annual RMDs & 10-Year Rule*	Ghost Life Expectancy Annual RMDs

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

46

STRATEGIES FOR INHERITED RETIREMENT ACCOUNTS

Christopher Hoyt, JD

Professor, University of Missouri Kansas City School of Law

INTRODUCTION AND DEFINITIONS

48

DISTRIBUTIONS FROM INHERITED RETIREMENT ACCOUNTS ARE TAXABLE INCOME

INCOME IN RESPECT OF A DECEDENT (IRD) - §691

- No stepped-up basis for retirement assets.
- Distributions from inherited retirement accounts are usually taxable income to the beneficiaries.

49

USUAL OBJECTIVE:

Defer paying income taxes in order to get greater cash flow.

	Principal	10% Yield
Pre-tax amount	$ 100,000	$ 10,000
Income tax on distribution (40%)	40,000	
Amount left to invest	$ 60,000	$ 6,000

50

OPTIONS FOR A SURVIVING SPOUSE

51

MARRIED COUPLES: RETIREMENT ASSETS

Surviving spouse has an option that no other beneficiary has:

- A rollover of deceased spouse's retirement assets to her or his own new IRA.
- Creditor protection, too!

Other beneficiaries cannot do a rollover.

- Main option: liquidate over 10 years.

52

LEAVE $ IN DECEDENT'S ACCOUNT?

Required distributions if surviving spouse is the **sole** beneficiary.

- Spouse is "eligible designated beneficiary" (EDB).
  - Life expectancy payout, rather than the usual 10-year time limit.
- Spouse can recalculate life expectancy.
- IRAs only: Spouse can elect to treat IRA as his or her own.
- Decedent died before age 72?
  - No required distribution until year the deceased spouse would have been age 72.

53

OUTCOMES & STRATEGIES WHEN BENEFICIARY OF A RETIREMENT ACCOUNT IS A TRUST

54

WHEN BENEFICIARY OF RETIREMENT ACCOUNT IS A TRUST

- Definitions
  - "See-through" trust.
  - Conduit trust vs. accumulation trust.
- Case study: IRA payable to a trust for a surviving spouse and for children from a prior marriage.
- Naming a tax-exempt CRT as a beneficiary.

55

IRAS PAYABLE TO TRUSTS

56

IRAS PAYABLE TO TRUSTS

General Rule: Trust is not a designated beneficiary.

As is the case when the probate estate is the beneficiary, the *general rule* is that naming a trust as the beneficiary means that there is "no designated beneficiary," and the account may have to be liquidated in just five years.

57

IRAS PAYABLE TO TRUSTS
Reg. §1.409(a)(9)-4, Q&A 5 & 6

General Rule: Trust is not a designated beneficiary.

Exception: "See-through" trust if four conditions are met.

1) The trust is a valid trust under state law.
2) The trust is irrevocable (or will become irrevocable on death).
3) The beneficiaries are identifiable from the trust instrument.
4) A document is given to the plan administrator. Either:
   - A copy of the entire trust instrument, or
   - A certified list of all the beneficiaries of the trust.

58

IRAS PAYABLE TO TRUSTS
Reg. §1.409(a)(9)-4, Q&A 5 & 6

General Rule: Trust is not a designated beneficiary.

Exception: "See-through" trust if four conditions are met.

Types:

- Conduit trusts
- Accumulation trusts

59

CONDUIT TRUSTS
Reg. §1.409(a)(9)-5, Q&A 7(c)(3), Example 2

Defined:

- Where the governing instrument provides that all amounts distributed from the retirement account to the trustee while the primary beneficiary is alive will, upon receipt by the trustee, be paid directly from the trust to that beneficiary.
- Advantage of a conduit trust: The *conduit beneficiary* is considered the *sole beneficiary* of that trust. The RMD computation ignores beneficiaries who will receive retirement plan $$ after the conduit beneficiary dies.

60

ACCUMULATION TRUSTS
Reg. §1.409(a)(9)-5, Q&A 7(c)(1)

Defined:

- A trust where the trustee has the power to either distribute or retain distributions that the trustee receives from a retirement plan account.
- If retained, the income tax rate will likely be 37%.
  - There is no requirement to keep the money in an accumulation trust. Some estate planners name an accumulation trust as the beneficiary to provide asset protection (divorce, etc.) for up to 10 years. They plan to have the trust distribute all the retirement plan income to the beneficiary over 10 years, so the income will be taxed at a lower income tax rate.

61

ACCUMULATION TRUSTS
Effect of Remainder Beneficiaries

Generally, all beneficiaries of an accumulation trust are considered for the RMD computation.

- Prop. Reg. §1.401(a)(9)-4(f)(3); PLR 200228025 (Apr. 18, 2002)

Problem when some beneficiaries are EDBs, and others are not EDBs:

- The EDB may have to receive all assets in just 10 years rather than over the longer time period of the EDB's remaining life expectancy.

62

ACCUMULATION TRUSTS
Effect of Remainder Beneficiaries

Generally, all beneficiaries of an accumulation trust are considered for the RMD computation.

- **Exception**: Accumulation trust for *disabled* and *chronically ill* (e.g., special needs trust):
  - §401(a)(9)(H)(v) Applicable Multi-beneficiary Trust

63

ACCUMULATION TRUSTS
Effect of Remainder Beneficiaries

Generally, all beneficiaries of an accumulation trust are considered for the RMD computation.

- Exception: Accumulation trust for *disabled* and *chronically ill* (e.g., special needs trust).
- **Exception:** Remote contingent beneficiary (charity)
  - For example, one can disregard a charity named as a contingent beneficiary in the event every descendent has died before the IRA owner.
  - Prop. Reg. §1.401(a)(9)-4(f)(3)(ii)(A) - [(ii) Certain trust beneficiaries disregarded -- (A) Entitlement conditioned on death of secondary beneficiary.]

64

ACCUMULATION TRUSTS

Effect of Remainder Beneficiaries

Generally, all beneficiaries of an accumulation trust are considered for the RMD computation.

- Exception: Accumulation trust for *disabled* and *chronically ill* (e.g., special needs trust).
- **Another exception:** "Age 31 trust"
  - The proposed regs would disregard remainder beneficiaries of a trust for ***any*** minor child if retirement benefits must be distributed to that beneficiary by age 31.
  - Prop. Reg. §1.401(a)(9)-4(f)(3)(ii)(B) - [(ii) Certain trust beneficiaries disregarded -- (B) Entitlement conditioned on death of young individual.]

65

IRA TO BENEFIT 2ND SPOUSE AND CHILDREN FROM PRIOR MARRIAGE

CASE STUDY

66

MANDATORY DISTRIBUTIONS

(ASSUME INHERIT IRA AT AGE 80 AND DIE AT AGE 94.)

Limon Nade owned three IRAs when he died this year at the age of 91. His surviving spouse, Sarah Nade, was age 80 the year that he died.

Each IRA had a different beneficiary:

- An accumulation trust for Sarah, remainder to his children from his first marriage.
- A conduit trust for Sarah, remainder to his children from his first marriage.
- Sarah was the sole beneficiary (rollover is possible).

67

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

<u>Age</u>

80 Husband's RMD in the year of death.

Prop. Reg. §1.402(c)-2(j)(3)

- **If the deceased owner had not withdrawn the entire RMD before the date of death, the balance must be distributed to *the beneficiary* of the IRA that year.**
- *[Proposed Regs have a grace period if full distribution wasn't taken in year of death: beneficiary can receive next year if before beneficiary's tax return filing deadline. Prop Reg §54.4974-1(g)(3)]*

68

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

Age	Accumulation Trust	
81		
85		
90	100.00%	<<10 years, since is an accumulation trust
91	empty	
92	empty	(Non-EBD children affect outcome)

69

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

Age	Accumulation Trust	
81	-0-% ??	
85	-0-% ??	
90	100.00%	<<10 years, since is an accumulation trust
91	empty	
92	empty	

70

SECURE ACT (2019)

When enacted, most believed no RMDs in years one through nine.

But the 2022 proposed regulations would require RMDs if the IRA owner (or employee) died after the RBD.

71

RMDS - DEFINED CONTRIBUTION PLANS

Prop. Reg. §1.401(a)(9)-5(d)(1) (2022)

Explanation from the preamble to the regs:

- "For example, if an employee died ***after the required beginning date*** with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the ***beneficiary's*** life expectancy as under the existing regulations **for up to nine calendar years after the employee's death.** In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required."

72

BUT WOULD THIS RULE APPLY TO SARAH?

Sarah is the surviving spouse.

And a surviving spouse is an "eligible designated beneficiary."

73

RMDS - DEFINED CONTRIBUTION PLANS

Prop. Reg. §1.401(a)(9)-5(d)(1) (2022)

Sorry, Sarah! The adult children from the first marriage are also considered. So, these payout rules *will* apply to you.

74

RMDS - DEFINED CONTRIBUTION PLANS

Prop. Reg. §1.401(a)(9)-5(d)(1) (2022)

Explanation from the preamble to the regs:

- "...these proposed regulations provide a general rule under which, if an employee has more than one designated beneficiary, and at least one of them is *not* an eligible designated beneficiary, then for purposes of Section 401(a)(9), the employee is treated as not having an *eligible* designated beneficiary. As a result, the employee's interest must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death."

Sorry, Sarah! The adult children from the first marriage are also considered. So, these payout rules *will* apply to you.

75

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

Age	Accumulation Trust	
81	-0-% ??	
85	-0-% ??	
90	100.00%	<<10 years, since it's an accumulation trust

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

76

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age	RMD %
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	100.0%

77

Age 81: 1/10.5 =

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age	RMD %
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	100.0%

78

Age 81: 1/10.5 =

Age 82: 1/9.5 =

Age 83: 1/8.5 =

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age	RMD %
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	100.0%

79

Age 81: 1/10.5 = 9.5%

Age 82: 1/9.5 = 10.5%

Age 83: 1/8.5 = 11.8%

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age	RMD %
81	
82	
83	
84	
85	
86	
87	
88	
89	
90	100.0%

80

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age 81: 1/10.5 = 9.5%
Age 82: 1/9.5 = 10.5%
Age 83: 1/8.5 = 11.8%

Age	RMD %
81	9.5%
82	10.5%
83	11.8%
84	
85	
86	
87	
88	
89	
90	100.0%

81

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age 81: 1/10.5 = 9.5%
Age 82: 1/9.5 = 10.5%
Age 83: 1/8.5 = 11.8%

Age	RMD %
81	9.5%
82	10.5%
83	11.8%
84	13.3%
85	15.4%
86	18.2%
87	22.2%
88	28.6%
89	40.0%
90	100.0%

82

Age	Accumulation Trust
81	- 9.5% -
85	- 15.4% -
90	100.00%

Age	Life Expectancy
80	11.2 years
81	**10.5 years**
82	9.9 years
83	9.2 years

Age 81: 1/10.5 = 9.5%
Age 82: 1/9.5 = 10.5%
Age 83: 1/8.5 = 11.8%

Age	RMD %
81	9.5%
82	10.5%
83	11.8%
84	13.3%
85	15.4%
86	18.2%
87	22.2%
88	28.6%
89	40.0%
90	100.0%

83

RMDS ARE LESS BURDENSOME FOR YOUNGER BENEFICIARIES (e.g., Children)

Age of Beneficiary		Life Expectancy (in years)
30	***1.9%***	53.3
40		43.6
50	***2.9%***	34.2
60		25.2
70	***5.3%***	18.7
81	***9.5%***	10.5

84

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 92.)

Age	Accumulation Trust
81	9.52%
85	15.38%
90	100.00%
91	empty
92	empty

Under the 2022 proposed regulations, the "designated beneficiary" would have to receive RMDs over each of the nine years after death, and the account would have to be liquidated in the tenth year.
WHY? Because death occurred after the "required beginning date."

85

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 92.)

Age	Accumulation Trust
81	9.52%
85	15.38%
90	100.00%
91	empty
92	empty

Question:
Under the 2022 proposed regulations, what are the required distributions if death occurred ***before*** the "required beginning date?"

86

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 92.)

Age	Accumulation Trust
81	--0%--
85	--0%--
90	100.00%
91	empty
92	empty

Question:
Under the 2022 proposed regulations, what are the required distributions if death occurred ***before*** the "required beginning date?"

Answer:
There are no RMDs in years one through nine.

87

AGE AT DEATH

Median Age at Death on Federal Estate Tax Returns

Age 80
Men

Age 84
Women

Source – http://www.irs.gov/pub/irs-soi/12essprbuldecedents.pdf

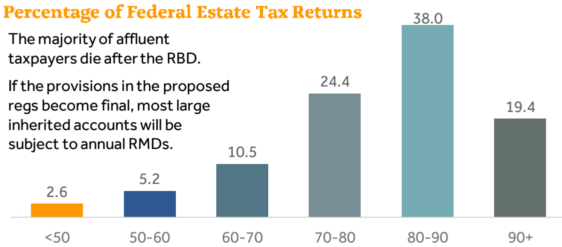
88

AGE AT DEATH

Percentage of Federal Estate Tax Returns

The majority of affluent taxpayers die after the RBD.

If the provisions in the proposed regs become final, most large inherited accounts will be subject to annual RMDs.



Source – The Income and Wealth of 2007 Estate Tax Decedents (p.151), by Barry Johnson, Brian Raub & Joseph Newcomb

89

CONSIDERATIONS FOR A SURVIVING SPOUSE

90

MANDATORY DISTRIBUTIONS

(ASSUME INHERIT IRA AT AGE 80 AND DIE AT AGE 94.)

Limon Nade owned three IRAs when he died this year at the age of 91. His surviving spouse, Sarah Nade, was age 80 the year that he died.

Each IRA had a different beneficiary:

- An **accumulation trust** for Sarah, remainder to his children from his first marriage.
- A **conduit trust** for Sarah, remainder to his children from his first marriage.
- **Sarah** was the sole beneficiary (**rollover** is possible).

91

CONDUIT TRUST FOR SURVIVING SPOUSE?

Conduit trust permits an EDB to receive distributions over remaining life expectancy.

- There are RMDs every year.

92

CONDUIT TRUST FOR SURVIVING SPOUSE?

Conduit trust permits an EDB to receive distributions over **remaining life expectancy**.

- There are RMDs every year.

93

CONDUIT TRUST FOR SURVIVING SPOUSE?

Conduit trust permits an EDB to receive distributions over **remaining life expectancy**.

- There are RMDs every year.

Surviving spouse can annually recompute remaining life expectancy.

Age of beneficiary	Life Expectancy
80	**11.2 more years**
90	5.7 more years

94

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

Age	Accumulation Trust
81	9.52%
85	15.38%
90	100.00%
91	empty
92	empty

95

MANDATORY DISTRIBUTIONS

(Assume inherit IRA at age 80 and die at age 94.)

Age	Accumulation Trust	Conduit Trust
81	9.52%	9.52%
85	15.38%	12.35%
90	100.00%	17.54%
91	empty	18.87%
92	empty	20.41%

96

MANDATORY DISTRIBUTIONS
(Assume inherit IRA at age 80 and die at age 94.)

Age	Rollover	Accumulation Trust	Conduit Trust
81	**5.19%**	9.52%	9.52%
85	6.25%	15.38%	12.35%
90	8.26%	100.00%	17.54%
91	8.77%	empty	18.87%
92	9.26%	empty	20.41%

97

MANDATORY DISTRIBUTIONS
(Assume inherit IRA at age 80 and die at age 94.)

Age	Rollover	Conduit Trust
81	**5.19%**	9.52%
85	6.25%	12.35%
90	8.26%	17.54%
91	8.77%	18.87%
92	9.26%	20.41%

98

MANDATORY DISTRIBUTIONS
(ASSUME INHERIT IRA AT AGE 80 AND DIE AT AGE 94.)

Limon Nade owned three IRAs when he died this year at the age of 91. His surviving spouse, Sarah Nade, was age 80 the year that he died.

Each IRA had a different beneficiary:

- An **accumulation trust** for Sarah, remainder to his children from his first marriage.
- A **conduit trust** for Sarah, remainder to his children from his first marriage.
- **Sarah** was the sole beneficiary (**rollover** is possible).

Wait a minute!

I heard that even when an IRA is payable to a trust or to the probate estate, the IRS will permit a surviving spouse to rollover the IRA into their own personal IRA.

Is that true?

ANSWER:

That is true in some situations. But it probably doesn't apply to this trust since the children from his first marriage are also beneficiaries of this trust.

99

IRS PLRs
Surviving Spouse *Rollover*

20+ IRS Private Letter Rulings – 2015-2022*

Surviving spouse can rollover deceased spouse's IRA, even when the account is payable to:

- Trust for the spouse.
- The estate, with estate pour-over into a trust for the spouse.
- The estate, where the spouse is the sole or residuary beneficiary of the estate.

* A private letter ruling (PLR) is issued by the IRS National Office in response to a specific request from a taxpayer as to the tax consequences of a proposed transaction. A PLR applies tax laws to specific facts only, is solely for the taxpayer who requested it, and should not be relied upon as authority by other taxpayers. PLRs may later be revoked by the IRS. As such, PLRs do not carry the stamp of law, but do give an indication of current IRS thinking toward a specific type of transaction. All reference to PLRs in this presentation are for informational purposes only.

100

SURVIVING SPOUSE CAN ROLLOVER IRA PAYABLE TO PROBATE ESTATE
PLR 202210016 (Dec. 12, 2021)

- Generally, if a decedent's IRA proceeds pass through a third party (for example, an estate) and then are distributed to the decedent's surviving spouse, the surviving spouse will be treated as having received the IRA proceeds from the third party and not from the decedent's IRA. Thus, **generally, a surviving spouse will *not* be eligible to roll over the IRA proceeds into the surviving spouse's own IRA.**

101

SURVIVING SPOUSE CAN ROLLOVER IRA PAYABLE TO PROBATE ESTATE
PLR 202210016 (Dec. 12, 2021)

- **However, the general rule will *not apply*** in situations in which the decedent's estate is the beneficiary of a decedent's IRA proceeds, and the **decedent's surviving spouse is the sole administrator of the estate and the sole beneficiary of the IRA proceeds that pass through the estate.** Under these circumstances, no third party can prevent the surviving spouse from receiving the proceeds of the IRA and from rolling over the proceeds into the surviving spouse's own IRA.

102

IRS PLRs
Surviving Spouse *Rollover*

Is a PLR necessary?

- IRS user fee for PLR now $28,300 (2015).
  - PLR on IRA issues now $10,000 (2016).
- ACTEC: "Public needs a Revenue Ruling."
- Some trustees willing to do rollover without a PLR, if facts fit the PLRs.

103

MANDATORY DISTRIBUTIONS
(ASSUME INHERIT IRA AT AGE 80 AND DIE AT AGE 94.)

Limon Nade owned three IRAs when he died this year at the age of 91. His surviving spouse, Sarah Nade, was age 80 the year that he died.

Each IRA had a different beneficiary:

- An **accumulation trust** for Sarah, remainder to his children from his first marriage.
- A **conduit trust** for Sarah, remainder to his children from his first marriage.
- **Sarah** was the sole beneficiary (**rollover** is possible).

The spouse's rollover option probably doesn't apply to this trust since **the children from his first marriage are also beneficiaries of the trust.** (They could object to a rollover to step-mom's IRA.)

BUT IF THE REMAINDER BENEFICIARIES ARE CHILDREN FROM THIS MARRIAGE, they could **disclaim** their interest in the retirement assets, and thereby permit their mother to do a rollover. *PLRs 201901005 (Oct. 10, 2018) and 200934036 (April 29, 2009)*

104

CLAWBACK: PREPARING FOR THE "DOUBLE EXEMPTION" SUNSET

Robert S. Keebler, CPA/PFS, MST, AEP®
(Distinguished), CGMA
Keebler & Associates, LLP

STATUTORY REGULATIONS

- The TCJA added IRC § 2001(g)(2) which specifically grants Treasury the authority to prescribe regulations to accommodate different basic exclusion amounts.
- In 2019, Treasury published the "clawback" regulations which created a special rule to preserve credit used on lifetime gifts to the extent it exceeds the available credit at death.

106

"CLAWBACK" PLANNING: CRITICAL CONCEPTS

107

THE TAX REFORM ACT OF 1976

Gift & Estate Tax Unified

108

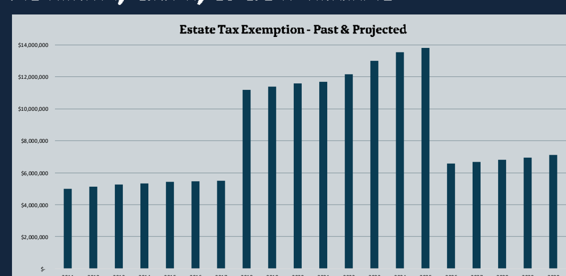
ESTATE, GIFT, & GST TAXES

26 USC §2010, TCJA §11061

- **The TJCA doubled the basic exclusion amount (BEA) and GST exemption** ($10,000,000 in 2011 dollars).
- **The "double exemption" is scheduled to sunset December 31, 2025.**
  - It will revert to $5,000,000 in 2011 dollars adjusted for inflation.
  - The IRS estimates $6,800,000 in the latest regulations.

109

ESTATE, GIFT, & GST TAXES



110

ESTATE, GIFT, & GST TAXES

Change coming?

- 2018 – First year estate tax exemption "doubled."
- 2020-2022 – Various changes proposed.
- 2026 – Double estate tax exemption scheduled to "sunset" by statute on 12-31-2025; possibly an ideal time to make other changes.

111

PORTABILITY & "CLAWBACK"

112

PORTABILITY BASICS

26 USC 2010(c)(4)

- Portability allows the executor to either utilize the decedent's estate tax exclusion amount ($12,060,000 in 2022) or transfer it to the decedent's surviving spouse.
- However, the new law does not allow the decedent to transfer his/her unused GST tax exemption to the surviving spouse.

113

PORTABILITY BASICS

IRC §2010(c)(3)

Basic Exclusion Amount (BEA)

- Prior to 2011, the basic exclusion amount was referred to as the "applicable exclusion amount."
- Like the prior "applicable exclusion amount," the BEA is reduced by prior taxable gifts.

114

PORTABILITY BASICS

IRC §2010(c)(4)

Deceased Spousal Unused Exclusion Amount (DSUE)

- DSUE is the unused estate tax exclusion that the deceased spouse transfers to his/her surviving spouse.

115

PORTABILITY BASICS

DSUE is limited to the lessor of:

A. The basic exclusion amount (BEA):
   - $12.06M in 2022

B. The excess of:
   i. The BEA of the last deceased spouse of the surviving spouse, over
   ii. The taxable estate of the last deceased spouse.

Example:

- BEA = $12.06 M
- Deceased's taxable estate = $3.40 M
- $12.06 M – 3.40 M = $8.66 M

116

PORTABILITY BASICS

Indexing for Inflation

- The BEA is indexed for inflation.
- DSUE ***is not indexed*** for inflation.
- For example, for 2022 deaths, a surviving spouse could have the exclusion amounts shown in the table.

	BEA	DSUE
2022	$ 12,060,000	$ 12,060,000
2023	$ 12, 600,000	$ 12,060,000
2024	$ 13,000,000	$ 12,060,000
2025	$ 13,330,000	$ 12,060,000
2026	$ 6,800,000	$ 12,060,000
2027	$ 6,940,000	$ 12,060,000

117

FINAL "CLAWBACK" REGULATIONS

PUBLISHED: 11/26/2019

118

CLAWBACK REGULATIONS

Overview

- "Increased BEA"
- Special BEA Gift Tax Rule
- "Use it or Lose it" Rule
- DSUE Carryover Rule
- Inflation Adjustments

119

CLAWBACK REGULATIONS

Applicable Exclusion Amount (AEA): Sum of the basic exclusion amount (BEA) and the deceased spousal unused exclusion amount (DSUE).

BEA + DSUE = AEA

120

CLAWBACK REGULATIONS

What is "Base" BEA and "Increased" BEA?

- "Base" BEA:
  - The original 2010 basic exclusion amount.
  - Under current law, inter vivos gifts consume base BEA first.
- "Increased" BEA:
  - The additional BEA provided as part of the TCJA.
  - Under current law, inter vivos gifts consume increased BEA second, only after base BEA is exhausted.

121

CLAWBACK REGULATIONS
Example 1

$2,400,000 of exemption is lost.

- Individual makes cumulative gifts of $9,000,000 – all of which are sheltered from gift tax by the $11,400,000 BEA.
- The BEA at the individual's death is $6,800,000.
- The credit against estate tax is calculated based on $9,000,000.

122

CLAWBACK REGULATIONS
Example 2

The "doubled" exemption is lost.

- Individual makes cumulative gifts of $4,000,000 – all of which are sheltered from gift tax by the $11,400,000 BEA.
- Adjusted taxable gifts are included in the estate tax computation.
- The BEA at the individual's death is $6,800,000.
- The credit against estate tax is calculated based on $6,800,000.

123

CLAWBACK REGULATIONS
Example 3

The deceased spouse's exemption is preserved, but the surviving spouse's "doubled" exemption is lost.

- Spouse dies before 2026 and elects portability when the BEA is $11,400,000; the first-to-die spouse made no taxable gifts and did not have a taxable estate.
- The surviving spouse makes no taxable gifts and does not remarry prior to dying when the BEA is $6,800,000.
- The credit against estate tax is calculated based on $18,200,000 ($11,400,000 + $6,800,000).

124

CLAWBACK REGULATIONS
Example 4

The deceased spouse's exemption is preserved, but the surviving spouse's "doubled" exemption is lost.

- Spouse dies before 2026 and elects portability when BEA is $11,400,000; the first-to-die spouse made no taxable gifts and did not have a taxable estate.
- The surviving spouse makes taxable gifts of $14,000,000; DSUE is used first.
- The surviving spouse does not remarry prior to dying when BEA is $6,800,000.
- The credit against estate tax is calculated based on $18,200,000 ($11,400,000 + $6,800,000); the $14,000,000 gift is included in the estate.

125

THE NEW PROPOSED REGULATIONS: ANTI-CLAWBACK RULE EXCEPTION

PUBLISHED: 4/27/2022

126

ANTI-CLAWBACK RULE EXCEPTION
THE CORE CONCEPT

Completed gifts excluded from the taxable estate. vs. **Completed gifts treated as testamentary transfers for estate tax purposes & included in the taxable estate.**

127

ANTI-CLAWBACK RULE EXCEPTION
PERCEIVED ABUSE

A taxpayer could capture the benefit provided in the 2019 regulations, with forced inclusion planning ...

giving away property for estate and gift tax purposes *without* giving away the right to use and enjoy it.

128

POSSIBLE STRATEGIES – PRIOR TO NEW REGULATIONS

- 1% gift of a QTIP life estate by surviving spouse.
- Enforceable promissory note.
- Defective §2701 freeze.
- Completed gift with §2036 inclusion.
- Similar strategies which "burn" exemption.

UNLOCKING THE MYSTERIES OF SPLIT-DOLLAR LIFE INSURANCE

R. Matthew Pate, JD, LL.M., Corporate Vice President
New York Life Insurance Company

WHAT IS "SPLIT-DOLLAR LIFE INSURANCE?"

WHAT IS "SPLIT-DOLLAR LIFE INSURANCE?"

- Not a type of policy, just a method to divide the benefits of a cash value (permanent) life insurance contract between more than one party.
- Generally reflected in a written agreement.
  - Example: Company owns a life insurance policy on a key employee and "endorses" a portion of the death benefit to the employee's spouse as an executive benefit.

THE GHOST OF SPLIT-DOLLAR PAST

- Prior to 2002, taxation of split-dollar plans was based on "incomplete" IRS guidance.
  - As a result, certain contracts and arrangements were perceived as abusive – e.g., "equity split dollar" that shifted growth in policy cash values to the policy owner tax-free.
  - Lack of clarity on contributory arrangements (parties sharing cost of premiums).
- As a result, Treasury regulations were issued in 2002 that define split-dollar arrangements and clarified taxation.

SPLIT-DOLLAR PRESENT

- Regulations created two possible "regimes" for split-dollar life insurance:
  - Economic Benefit Regime
    - "Renting term insurance" when premiums paid.
  - Loan Regime
    - Premiums are treated as a loan.
- Under both regimes, split-dollar is viewed effectively as a loan of premiums, but interest calculation is either based on below market loan rules (Loan Regime) or Table 2001 actuarial "term life insurance cost" (Economic Benefit Regime).

WHICH REGIME CONTROLS?

- Step one: Depends on who owns the policy.
  - If premium payor owns the policy, economic benefit regime controls – i.e., cost of death benefit payable to other party is based on actuarial term insurance cost (Per Table 2001 – OR, can use carrier's one year term rates based on non-renewable term policy that is "regularly sold."
  - If premium payor does not own the policy, then "loan regime" controls – i.e., all premiums will be treated as loans to the policy owner regardless of what the agreement says, subject to below market interest and OID rules.
- Step two: Ignore step one if the only benefit the policy owner receives is death benefit protection – the "deemed owner" exception – primarily used in estate planning.

PRACTICAL APPLICATIONS & EXAMPLES

PRACTICAL APPLICATIONS

- To provide an executive benefit (per above example).
- To utilize corporate capital to fund life insurance in an income tax-efficient fashion.
- To fund life insurance inside an irrevocable trust in a gift tax-efficient fashion ("Private Split Dollar").

137

ESTATE PLANNING EXAMPLE #1

Business owner with large illiquid estate of $60M:

- Estate tax need projected at $20M.
- Life insurance will be purchased to provide tax liquidity at death. Ideally acquire 2nd-to-die life insurance to fund taxes at 2nd death on most cost-effective basis.
- Policy will be owned inside an irrevocable life insurance trust to avoid estate tax on proceeds.

138

ESTATE PLANNING EXAMPLE #1

Product and funding options:

- Term insurance with gifts under annual exclusion.
  - Coverage will eventually lapse, and estate tax problem could be exacerbated.
  - Few carriers offer survivorship term coverage.
- Permanent life insurance funded with lifetime exclusion gifts.
  - Client doesn't have access to policy cash values.
  - Client wants to save exemption for other more efficient uses (discountable assets with high appreciation potential).

139

ESTATE PLANNING EXAMPLE #1

- Permanent life insurance funded on an economic split dollar basis.
  - Policy owned by trust, but split-dollar plan provides that grantors receive the greater of cash value or cumulative policy premiums at termination (death, or sooner if mutually agreed by the parties). Such "greater of" provision generally qualifies trust for "deemed owner" exception to loan regime.
  - Large premiums paid, but minor gift tax consequences as a result of Survivorship Table 2001 rates – calculated based on risk that both spouses die in a given year – typically very low, even for large death benefits.

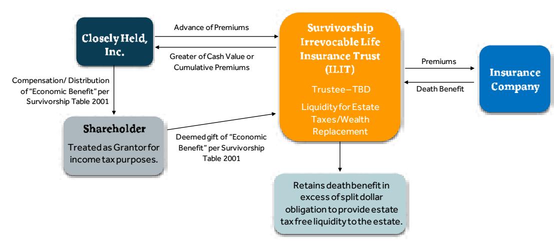
140

ESTATE PLANNING EXAMPLE #1

- Permanent life insurance funded on an economic split-dollar basis.
  - Company capital may be used to fund premiums, with same deemed economic benefit gift treated as corporate distribution (minimizes dividend or compensation consequences of getting corporate dollars out).
  - When first spouse dies, split-dollar may be swapped for loan ("switch dollar") or perhaps forgiven as lifetime exclusion gift. Depends on cost of single life economic benefit at that point.

141

ESTATE PLANNING EXAMPLE #1



142

ESTATE PLANNING EXAMPLE #2

Large liquid estate:

- Conservative assets (lots of cash, municipal bonds).
- Not a lot of asset shifting opportunities (no discounting or appreciation).
- No specific liquidity shortfall to pay taxes.
- Client wishes to have access to liquid assets if needed.

143

ESTATE PLANNING EXAMPLE #2

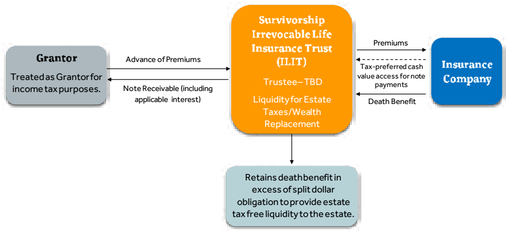
Solution: Private "loan regime" split-dollar with irrevocable trust.

- Keeps death benefit (above loan balance) outside of taxable estate.
- Client retains access to policy cash values through loan arrangement.*
- Gift tax generally avoided.

* The cash value in a life insurance policy is accessed through policy loans, which accrue interest at the current rate, and withdrawals. Loans and withdrawals will decrease the cash surrender value and death benefit.

144

ESTATE PLANNING EXAMPLE #2



145

TECHNICAL CONSIDERATIONS

146

TECHNICAL CONSIDERATIONS

Documentation

- Split-dollar agreement, and:

- Loan regime -
  - Note payable;
  - Representation of the parties (non-recourse loans);
  - Collateral assignment (?)
- Economic benefit regime -
  - Collateral assignment (?)

147

TECHNICAL CONSIDERATIONS

Unwinding

- Handling loan forgiveness under loan regime:
  - Interest -
    - Acceleration of gift for "term loans" vs. demand or hybrid loans.
  - Principal -
    - Was note valid in the first place?
    - Gift at inception if no intent to repay?
- Potential tax issues upon "transfer" of policy under deemed owner exception under economic benefit regime.

148

CORPORATE SPLIT-DOLLAR OPTIONS

Executive benefit under loan regime:

- Not as common but may make sense in certain contexts (credit unions, execs at charities otherwise subject to excess comp tax under TCJA).

Combination with deferred compensation under economic benefit regime:

- Split-dollar arrangement in place to provide tax-free death benefit to spouse of executive during employment.
- Split-dollar terminates upon retirement, but policy inside company then used to fund deferred compensation obligation during retirement through access to policy cash values.
- Death benefit remains in place as cost recovery option fbo company.

149

USING TAX-EXEMPT CRTS TO "STRETCH" AN INHERITED IRA

Christopher R. Hoyt, JD
Professor, University of Missouri - Kansas City School of Law

INTRODUCTION AND DEFINITIONS

151

STRETCH IRA

- "Stretch IRA" means an inherited retirement account (e.g., IRA), where payments are gradually made over the beneficiary's life expectancy.
- Until the enactment of the SECURE Act, it was fairly easy for any beneficiary who inherited a retirement account to receive distributions until the age of 83 (or older for beneficiaries who inherited at an older age).
- **Beginning 2020: General rule is a ten-year liquidation.**
- Inherited IRA distributions are taxable income.
- A $1 million IRA will shrink to $700k in 10 years (oversimplified).
- *"Would you like your descendants to be able to get an income stream from all of your retirement assets for the rest of their lives?"*

152

CHARITABLE REMAINDER TRUST

- Payment to non-charitable beneficiary(ies) for *life* *or* for a *term of years* (maximum 20 years).
- Remainder interest distributed to charity.
- Exempt from income tax.

153

LIQUIDATE INHERITED IRAS IN 10 YEARS

Implications for charities -

- Donors more likely to consider:
  - Outright bequests.
  - Retirement assets to tax-exempt CRT:
    - Child: income more than 10 years; then charity.
    - Spouse & children (no estate tax marital deduction).

154

TWO-GENERATION CHARITABLE REMAINDER UNITRUST

- Typically pays 5% to the surviving spouse for life, then 5% to children for life, then liquidates to charity.
- Like an IRA, a CRT is exempt from income tax.
- Can be like ***a QTIP trust for IRD assets*** *(but no estate tax marital deduction).*

155

THEORY: TAX ADVANTAGE OF INCOME TAX DEFERRAL!

Move IRD tax-free after death from one tax exempt trust (e.g., the IRA) to another tax-exempt trust (the CRT).

Compare: A charitable lead trust is NOT tax exempt; don't name a CLT as an IRA beneficiary!

156

THEORY: TAX ADVANTAGE OF INCOME TAX DEFERRAL!

Move IRD tax-free after death from one tax exempt trust (e.g., the IRA) to another tax-exempt trust (the CRT).

It can be done! PLR 199901023*

No taxable income to beneficiaries until they receive distributions from CRT.

* A private letter ruling (PLR) is issued by the IRS National Office in response to a specific request from a taxpayer as to the tax consequences of a proposed transaction. A PLR applies tax laws to specific facts only, is solely for the taxpayer who requested it and should not be relied upon as authority by other taxpayers. PLRs may later be revoked by the IRS. As such, PLRs do not carry the stamp of law, but do give an indication of current IRS thinking toward a specific type of transaction. All reference to PLRs in this presentation are for informational purposes only.

157

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

CASE STUDY

158

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

Yes. It is possible. But usually not likely.

- It can happen with long-term CRUTs (e.g., 40 or 50 years) and beneficiaries who pay high income tax rates.
- Outcomes vary with investment returns and tax rates.
- A CRT is best for someone with charitable intentions who also wants to benefit family. It should not be foisted on people who have no charitable intent.

159

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

Yes. It is possible. But usually not likely.

- It can happen with long-term CRUTs (e.g., 40 or 50 years) and beneficiaries who pay high income tax rates.
- Outcomes vary with investment returns and tax rates.
- CRT can beat leaving outright to children when both:
  - There will be a high income-tax rate imposed on the distributions after death, and
  - The CRT will have a long term (e.g., at least 30 years).

160

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

-- Investments earn 5%

IRA	$1,000,000

161

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

-- Investments earn 5% -- Tax rate: 40%

IRA	$1,000,000
Income tax	-400,000
After-tax	**$600,000**

162

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

CRT	$1,000,000
Income tax	-400,000
After-tax	**$600,000**

163

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

CRT	$1,000,000	< charity
Income tax	-400,000	
After-tax	**$600,000**	< family gets

164

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

		5% Annual Income
CRT	$1,000,000	**$50,000**
Income tax	-400,000	
After-tax	**$600,000**	**$30,000**

165

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

			5% Annual Income
CRT	$1,000,000	< charity	**$50,000**
Income tax	-400,000		
After-tax	**$600,000**	< family gets	**$30,000**

166

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

		5% Annual Income
CRT	$1,000,000	**$50,000**
Income tax	-400,000	
After-tax	**$600,000**	**$30,000**

167

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$30,000*	*$20,000*
Income tax	-400,000			
After-tax	**$600,000**	**$30,000**		

168

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$30,000*	*$20,000*
Income tax	-400,000	*Income tax >>>*		*-$8,000*
		Net annual investment		$12,000
After-tax	**$600,000**	**$30,000**		

169

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$30,000*	*$20,000*
Income tax	-400,000	*Income tax >>>*		*-$8,000*
		Net annual investment		**$12,000**
After-tax	**$600,000**			**<50 years?**

170

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 40%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$30,000*	*$20,000*
Income tax	-400,000	*Income tax >>>*		*-$8,000*
		Net annual investment		**$12,000**
After-tax	**$600,000**	*Purchase $600k life insurance?*		**<50 years?**

171

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

CRT	$1,000,000

172

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

CRT	$1,000,000	< charity
Income tax	-200,000	
After-tax	**$800,000**	< family gets

173

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

		5% Annual Income
CRT	$1,000,000	**$50,000**
Income tax	-200,000	
After-tax	**$800,000**	**$40,000**

174

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

			5% Annual Income
CRT	$1,000,000	< charity	**$50,000**
Income tax	-200,000		
After-tax	**$800,000**	< family gets	**$40,000**

175

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

		5% Annual Income
CRT	$1,000,000	**$50,000**
Income tax	-200,000	
After-tax	**$800,000**	**$40,000**

176

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$40,000*	*$10,000*
Income tax	-200,000			
After-tax	**$800,000**	**$40,000**		

177

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$40,000*	*$10,000*
Income tax	-200,000	*Income tax >>>*		*-$2,000*
		Net annual investment		$8,000
After-tax	**$800,000**	**$40,000**		

178

CAN A CRT PRODUCE MORE FAMILY WEALTH THAN A 10-YEAR LIQUIDATION?

5% CRUT -- Investments earn 5% -- Tax rate: 20%

		5% Annual Income	*Consume*	*Save*
CRT	$1,000,000	**$50,000**	*$40,000*	*$10,000*
Income tax	-200,000	*Income tax >>>*		*-$2,000*
		Net annual investment		**$8,000**
After-tax	**$800,000**			**<50 years?**

179

LEGAL OBSTACLES WHEN TRYING TO USE A CRT

180

LEGAL OBSTACLES WITH A CRT

Young beneficiaries: 10% charitable deduction?

- Beneficiaries must be over age 27 for lifetime CRT.
- If beneficiaries are under age 27, the present value of the charity's remainder interest will be less than the minimum required 10% amount.

Federal estate tax paid?

CRT beneficiaries lose an income tax deduction.

- If a retirement account was part of a taxable estate, the beneficiaries who receive taxable distributions can claim an income tax deduction for the federal estate tax paid. §691(c)

181

CRT REQUIREMENTS THAT CAN POSE CHALLENGES

1. Annual payouts between 5% and 50%.
2. Minimum 10% charitable deduction.
3. Avoid multiple donors to a single CRT.
4. Private foundation self-dealing rules (apply to CRTs).
5. Problematic assets (partnership interests, debt-encumbered property, etc.).
6. Was trust actually administered in accordance with its terms?

182

CRT REQUIREMENTS THAT CAN POSE CHALLENGES

1. **Annual payouts between 5% and 50%.**
2. Minimum 10% charitable deduction.
3. Avoid multiple donors to a single CRT.
4. Private foundation self-dealing rules (apply to CRTs).
5. Problematic assets (partnership interests, debt-encumbered property, etc.).
6. Was trust actually administered in accordance with its terms?

183

CRT REQUIREMENTS THAT CAN POSE CHALLENGES

1. Annual payouts between 5% and 50%.
2. **Minimum 10% charitable deduction.**
3. Avoid multiple donors to a single CRT.
4. Private foundation self-dealing rules (apply to CRTs).
5. Problematic assets (partnership interests, debt-encumbered property, etc.).
6. Was trust actually administered in accordance with its terms?

184

MINIMUM 10% CHARITABLE DEDUCTION

- The value of the charity's remainder interest of a CRT must be at least 10% of the initial net fair market value of all property placed in the trust.
  - *Computed using the Section 7520 discount rates in effect at the time of contribution.*
- If a contribution is made to a trust that fails the 10% requirement, the trust will not qualify as a tax-exempt CRT.

185

MINIMUM 10% CHARITABLE DEDUCTION

Oversimplified, there are two ways that the present value of a charity's remainder interest in a CRT can be less than 10% of the value of the property contributed to the trust.

- **The first is if the stated payout rate is too high** (e.g., "for the next 20 years, distribute to my child 30% of the trust's assets each year").
- The solution is to lower the CRT's payout rate, but it cannot be lowered below 5%.

186

MINIMUM 10% CHARITABLE DEDUCTION

The second way is if the projected term of the trust is too long.

- The 10% requirement limits the projected term of a CRUT to a maximum of roughly 55 years.

187

MINIMUM 10% CHARITABLE DEDUCTION

The second way is if the projected term of the trust is too long.

- The 10% requirement limits the projected term of a CRUT to a maximum of roughly 55 years.

27

39

188

MINIMUM 10% CHARITABLE DEDUCTION

The second way is if the projected term of the trust is too long.

- The 10% requirement limits the projected term of a CRUT to a maximum of roughly 55 years.
- For example, in 2022 if there was only one beneficiary of a CRUT, then the 10% test was met only if the beneficiary was at least age **27**. If there were two beneficiaries who were the same age (e.g., children who are twins), then each had to be at least age **39**.

189

MINIMUM 10% CHARITABLE DEDUCTION

What can an estate planner do if the beneficiaries are so young that a CRT fails the 10% test?

- One strategy is to create multiple CRTs. For example, if a client has three children who are triplets and each is age 27, there could be three CRTs (one per child) rather than a single CRT.
- Another option is to have a CRT for a term of years.

190

MINIMUM 10% CHARITABLE DEDUCTION

Young beneficiaries: 10% charitable deduction?

- Beneficiaries must be over age 27 for lifetime CRT.
- If beneficiaries are under age 27, the present value of the charity's remainder interest will be less than the minimum required 10% amount.

Federal estate tax paid?

- CRT beneficiaries lose an income tax deduction
- If a retirement account was part of a taxable estate, the beneficiaries who receive taxable distributions can claim an income tax deduction for the federal estate tax paid. §691(c)

191

FOUR-TIER SYSTEM FOR DISTRIBUTIONS TO BENEFICIARIES OF A CRT ["WIFO"]

"WIFO"

- "Worst in, first out."
- The worst income that goes into the CRT is the first income that is distributed to the CRT beneficiaries.

192

FOUR-TIER SYSTEM FOR DISTRIBUTIONS TO BENEFICIARIES OF A CRT ["WIFO"]

1) First, as amounts of income (other than capital gains) to the extent of such income for that year and undistributed income of the trust for all prior years;
2) Second, as a capital gain to the extent of the capital gain for the year and the undistributed capital gain of the trust for all prior years;
3) Third, as other income (such as tax-exempt municipal bond interest) to the extent of such income for the year and such undistributed income of the trust for all prior years; and
4) Fourth, as a distribution of trust corpus.

193

FOUR-TIER SYSTEM FOR DISTRIBUTIONS TO BENEFICIARIES OF A CRT ["WIFO"]

Example: in a trust's first year, there is $5,000 of taxable interest and $5,000 of tax-exempt interest. Then $6,000 of the $10,000 of income is distributed to the beneficiary.

Taxation of beneficiary:

	Normal Trust	CRT
Taxable interest	$ 3,000	
Tax-exempt interest	$ 3,000	

194

FOUR-TIER SYSTEM FOR DISTRIBUTIONS TO BENEFICIARIES OF A CRT ["WIFO"]

Example: in a trust's first year, there is $5,000 of taxable interest and $5,000 of tax-exempt interest. Then $6,000 of the $10,000 of income is distributed to the beneficiary.

Taxation of beneficiary:

	Normal Trust	CRT
Taxable interest	$ 3,000	$ 5,000
Tax-exempt interest	$ 3,000	$ 1,000

195

THEORY: TAX ADVANTAGE OF INCOME TAX DEFERRAL!

Move IRD tax-free after death from one tax exempt trust (e.g., the IRA) to another tax-exempt trust (the CRT).

It can be done! PLR 199901023*

- **IRD from a retirement plan distribution is "Tier One" income in the CRT.**
- The beneficiary is unlikely to receive any long-term capital gain income or tax-exempt interest for at least 15 or 20 years.

* A private letter ruling (PLR) is issued by the IRS National Office in response to a specific request from a taxpayer as to the tax consequences of a proposed transaction. A PLR applies tax laws to specific facts only, is solely for the taxpayer who requested it and should not be relied upon as authority by other taxpayers. PLRs may later be revoked by the IRS. As such, PLRs do not carry the stamp of law, but do give an indication of current IRS thinking toward a specific type of transaction. All reference to PLRs in this presentation are for informational purposes only.

196

WHAT HAPPENS WHEN RETIREMENT ASSETS WERE INCLUDED IN AN ESTATE THAT WAS SUBJECT TO THE FEDERAL (OR A STATE) ESTATE TAX?

197

WHAT HAPPENS WHEN RETIREMENT ASSETS WERE INCLUDED IN AN ESTATE THAT WAS SUBJECT TO THE FEDERAL (OR A STATE) ESTATE TAX?

The beneficiary of an IRA can claim an *income* tax deduction for the federal estate tax attributable to the IRD, in the year included in income.

- *The Section 691(c) income tax deduction applies only to the federal estate tax (nothing for state estate taxes).*

198

INCOME TAX DEDUCTION TO BENEFICIARY WHO INHERITS IRD FOR *FEDERAL* ESTATE TAX PAID?

Example:

$100,000 distributed to a beneficiary from an IRA.

$ 40,000 of estate tax was paid by probate estate.

- Beneficiary reports $100,000 income (IRD).
- Beneficiary claims $40,000 income tax deduction (itemized deduction on Schedule A – Sec. 691(c)).
- Net taxable income to beneficiary: **$60,000.**

  (Beneficiary has $100k of cash, but only paid income tax on $60k.)

199

WHAT HAPPENS TO THE 691(C) DEDUCTION WHEN IRD IS PAID TO A CRT?

200

WHAT HAPPENS TO THE 691(C) DEDUCTION WHEN IRD IS PAID TO A CRT?

If estate tax was paid, that is "Tier Four" corpus.

Example: $100,000 IRA distributed to a CRT; $40,000 of estate tax was paid by probate estate.

Actually, only $36,000 of estate tax would be attributable to the IRD if the estate claimed the minimum 10% charitable deduction, but this example will use $40,000 to illustrate the legal principle with simpler numbers.

201

WHAT HAPPENS TO THE 691(C) DEDUCTION WHEN IRD IS PAID TO A CRT?

If estate tax was paid, that is "Tier Four" corpus.

Example: $100,000 IRA distributed to a CRT; $40,000 of estate tax was paid by probate estate.

In PLR 199901023, the IRS concluded:

The deduction provided by section 691(c)(1)(A) reduces the amount of IRD that Trust includes in its first-tier ordinary income. Therefore, the amount of first-tier ordinary income from the IRD is the net of the IRD under Section 691(a)(1)(B) less the deduction under Section 691(c)(1)(A). The Section 691(c)(1)(A) deduction is not directly made available to the income beneficiaries under Section 664(b).

202

WHAT HAPPENS TO THE 691(C) DEDUCTION WHEN IRD IS PAID TO A CRT?

If estate tax was paid, that is "Tier Four" corpus.

Example: $100,000 IRA distributed to a CRT; $40,000 of estate tax was paid by probate estate.

- Tier One: **$60,000** *[the net of $100,000 IRD – $40,000].*

203

WHAT HAPPENS TO THE 691(C) DEDUCTION WHEN IRD IS PAID TO A CRT?

If estate tax was paid, that is "Tier Four" corpus.

Example: $100,000 IRA distributed to a CRT; $40,000 of estate tax was paid by probate estate.

- Tier One: $60,000
- Tier Four: $40,000

Beneficiary gets no tax benefit unless trust shrinks to $40,000 or less.

SIMPLE SOLUTION:

**** Leave 10% of IRA outright to charity;***

**** Leave 90% to beneficiary so beneficiary can get 691(c) deduction.***

204

CAN A CRT STRETCH AN INHERITED IRA?

Situations that produce the best results for family:

- Combination of a long-term CRT (between 30 and 55 years) and high-income tax rates on IRD.

Obstacles and solutions:

- 10% charitable deduction with young beneficiaries.
- Term-of-years CRT won't get much deferral.
- Problem when federal estate tax was paid (WIFO).

205

CRUT OFFERS NON-TAX BENEFITS

206

CRUT CAN OFFER OTHER BENEFITS

- A steady income stream to the child that will last for the child's entire lifetime.
- Asset protection provisions can be included in the CRT in the event of a divorce or other financial challenge.
- Professional asset management is possible with a corporate trustee, which could be particularly helpful for a child who would have likely mismanaged a large lump-sum inheritance.

207

IRAS TO A CHARITABLE REMAINDER TRUST?

208

IRAS TO A CHARITABLE REMAINDER TRUST?

- What about the grandchildren?
  (Trust assets go to charity upon death of last child.)
- Solution: Life insurance on lives of the ***children***, to benefit grandchildren.

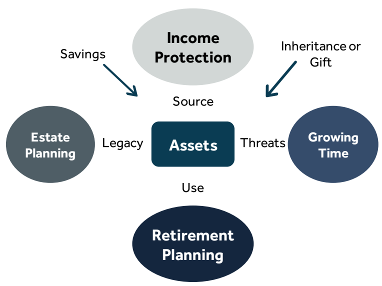
209

USING LIFE INSURANCE TO ACCOMPLISH ESTATE OBJECTIVES

Greg Holmgren, CLU®, ChFC®
Advanced Life Sales Officer
New York Life Insurance Company

FOUR PRIMARY STAGES:

OPTIMIZING, PROTECTING, AND DIRECTING ASSETS



211

STAGE 1 – BUILDING ASSETS

- Replaces income; is the source for most people.
- Types of expenses my income is paying:
  - Day to day living.
  - Paying down debt.
  - Saving for the future.
    - Retirement
    - College

212

STAGE 2 – GROWING ASSETS

- Brings completion to achieve objectives.
  - Growing assets for a future desire takes time.
  - If you don't have the time, life insurance can help complete the plan.

213

STAGE 3 & 4 – "RETIREMENT" PHASE

- Stage 3 – Using assets for income to support lifestyle.
- Stage 4 – Distributing assets to heirs at death.

- Stage 4 is a greater focus for those in stage 3 who have more than enough assets to provide for their standard of living.

214

OBJECTIVES DRIVE THE PROCESS

- Three potential beneficiaries of the estate:
  - Personal heirs.
  - Selected charities.
  - The government.
- How much would you like to go to each?
- How much will go to each in the current plan?

215

OBJECTIVES DRIVE THE PROCESS

- Objectives are personal.
  - Two different families with the same assets will produce two different plans.
- The service we provide is to help our clients:
  - Crystalize their objectives.
  - Build a plan to accomplish those objectives.
  - Act to execute that plan.

216

EIGHT SCENARIOS WHERE LIFE INSURANCE CAN HELP ACCOMPLISH OBJECTIVES

217

#1: LEAVE A SPECIFIC FINANCIAL LEGACY

Allowing more assets to be used to generate income.

- Any assets allocated for future expenses or desires are off limits for spending. Example:
  - Set aside $100,000 to go to next generation.
  - Set aside the premium required to buy a $100,000 life policy.

218

#2: ALLOW ADDITIONAL BENEFICIARIES

Chris Hoyt discussed a CRT idea.

- CRT means charity, not heirs, get remaining funds.
- Life insurance policy can create an additional benefit for the heirs.

How could that be done?

- Existing policies could be re-purposed.
- New policies purchased.

219

#3: TAKE HIGHER INCOME WITHOUT IMPACTING BENEFICIARIES

Replacing assets used to provide greater income.

- Generating retirement income is a different investment process with different risks.
  - Longevity is primary.
- Using mortality as an additional tool can add significant benefits.

220

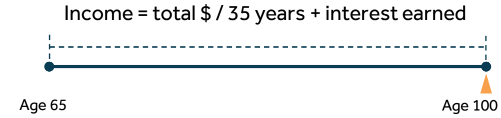
FLEXIBILITY TO TAKE HIGHER INCOME

- Without risk pooling, you must manage your money to last.
  - Safe withdrawal rate today under 3%.
  - First 5 years of returns are greatest threat.
- With risk pooling, you can share the burden.
  - Like buying yourself a future income stream.
  - With stability and guarantees built in.

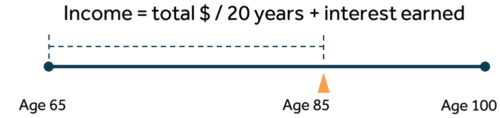
221

FLEXIBILITY TO TAKE HIGHER INCOME

Income = total $ / 35 years + interest earned



Income = total $ / 20 years + interest earned



222

FLEXIBILITY TO TAKE HIGHER INCOME

Why would someone not do this?

- Inflation:
  - Fear of eroding spending power.
- Growth:
  - Fear of no upside potential.
- Legacy:
  - Fear of leaving nothing at death.
- Liquidity:
  - Fear of having limited liquidity.

223

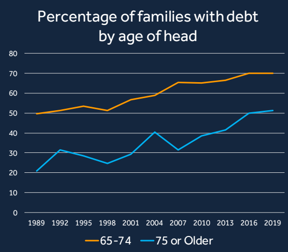
FLEXIBILITY TO TAKE HIGHER INCOME

How can these risks be handled?

- Inflation/Growth:
  - Apply a fraction of the assets to generate similar income.
  - Balance remains invested and growing.
- Legacy:
  - Owning a life insurance policy with death benefit equal to annuity premium restores value at death.
- Liquidity:
  - Come from investment account, or
  - Death benefit also can be source of liquidity.

224

#4: DEBT REDUCES INHERITANCE



Type of Debt	Age 65-74	Age 75+
All types	70.0	51.4
Home-secured	37.6	27.7
Installment	34.2	24.4
Credit card	41.1	28.0

Source – LIMRA – Flexible premium universal life products lapse/surrender and premium persistency experience 2009-2013, page 20 (PDF page 22/56)

225

#5: TAXES REDUCE INHERITANCE

Assets that are taxed include:
- Deferred annuities.
- Qualified money.
  - Even stretching requires a tax paid for access.
- Some states have inheritance taxes.
- Estates large enough for federal estate tax.

226

#6: PROVIDES CASH FOR EQUALIZATION

Assets that are not easily divided.
- A business where not all heirs are involved.

227

#7: PROVIDES CASH TO EASE TRANSITION

Assets that require expertise in managing:
- A business of any kind.
- Real estate that is owned but not occupied.

228

#8: CASH ALLOWS TIME FOR LIQUIDATION

The asset needs to be liquidated.
- Managing expertise or desire is not there.
- How much time required to prudently sell?
- How much management required during that time?

229

HOW DOES A DEATH BENEFIT HELP?

- Provides cash.
- Cash can provide time.

230

ISSUES OF INTEREST TO ADVISORS TODAY

ADVISOR SYMPOSIUM

THANK YOU FOR ATTENDING

231

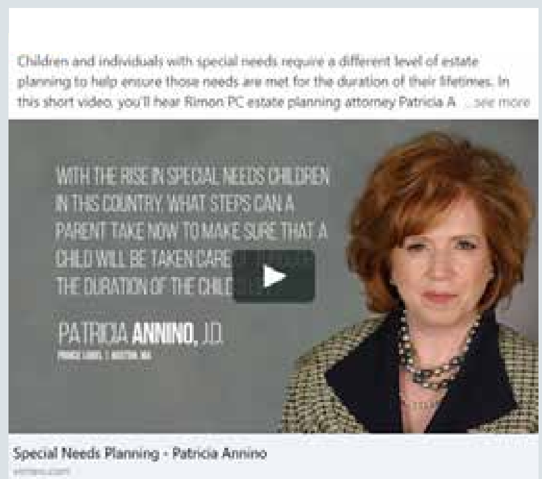
NYL's Premier Services

Resources for affluent clients and their financial advisors.

www.linkedin.com/showcase/new-york-life-premier-services

New York Life's Premier Services LinkedIn showcase provides content designed to educate financial advisors and the affluent families, closely held business owners, and high net worth clientele these professionals serve.

Useful information for clients & planners.



Interviews with industry leaders.

Insights on retirement & estate planning.

Updates on tax legislation.

Fiduciary Responsibility Checklist

Questions about the Insured:

- ❑ Do you know the insured's projected life expectancy and the chances of the insured living beyond it?
- ❑ Have you confirmed that the policy is projected (using reasonable assumptions) to stay in-force through at least the insured's life expectancy?
- ❑ If the policy ends, would the insured qualify for new coverage and would his or her rating be less than it is on the current policy?
- ❑ Does the policy owner have sufficient cash flow to pay premiums?

Questions about the Policy:

- ❑ When was the last time the life policy was reviewed?
    - o Do you request an annual in-force illustration showing both current and guaranteed assumptions?
- ❑ Based on current and guaranteed interest, charges and premium payments, how long is the policy projected to stay in force?
- ❑ Have any premium payments been late, reduced, or missed?
- ❑ Are there outstanding policy loans? If so:
    - o Does the in-force illustration reflect the impact of these loans on policy performance and stability?
    - o How is the policy loan interest rate determined?

Questions about the Policy continued:

- For term insurance policies:
  - Will the policy remain affordable for as long as needed?
  - Are there conversion privileges to a competitive permanent product?
- For permanent insurance policies:
  - Is there enough cash value to provide sufficient stability and flexibility?
  - Is the policy's performance subject to dramatic market fluctuations?
  - If policy pays dividends, what is the dividend paying history?

Questions about the Insurance Provider:

- What is the overall financial strength and reputation of the insurance company?
  - What is its surplus as a percentage of assets?
    - How does this compare to other insurance companies?
- What are the company's financial ratings?
  - Have the ratings declined in recent years?
  - How do these compare to other insurance companies?
- Is the insurance provider a mutual or stock company?
  - If it's a stock company that was previously a mutual company, was the policy bought prior to demutualization?
- Does the company use captive insurance subsidiaries to reduce its reserve requirements?
- Was the company acquired by another insurance carrier after the policy was purchased?
- Does the company have broad diversification in its product lines?

Federal Tax Rates and Limits for 2022

Individual income tax rates

Taxable income		Flat amount	+ %	of amount over
Unmarried individuals				
$ 0 to	$ 10,275	$ 0	10%	$ 0
10,276 to	41,775	1,027.50	12%	10,275
41,776 to	89,075	4,807.50	22%	41,775
89,076 to	170,050	15,213.50	24%	89,075
170,051 to	215,950	34,647.50	32%	170,050
215,951 to	539,900	49,335.50	35%	215,950
539,901 to	+	162,718.00	37%	539,900
Married filing jointly and surviving spouses				
$ 0 to	$ 20,550	$ 0	10%	$ 0
20,551 to	83,550	2,055.00	12%	20,550
83,551 to	178,150	9,615.00	22%	83,550
178,151 to	340,100	30,427.00	24%	178,150
340,101 to	431,900	69,295.00	32%	340,100
431,901 to	647,850	98,671.00	35%	431,900
647,851 to	+	174,253.50	37%	647,850
Head of household				
$ 0 to	$ 14,650	$ 0	10%	$ 0
14,651 to	55,900	1,465.00	12%	14,650
55,901 to	89,050	6,415.00	22%	55,900
89,051 to	170,050	13,708.00	24%	89,050
170,051 to	215,950	33,148.00	32%	170,050
215,951 to	539,900	47,836.00	35%	215,950
539,901 to	+	161,218.50	37%	539,900
Married filing separately				
$ 0 to	$ 10,275	$ 0	10%	$ 0
10,276 to	41,775	1,027.50	12%	10,275
41,776 to	89,075	4,807.50	22%	41,775
89,076 to	170,050	15,213.50	24%	89,075
170,051 to	215,950	34,647.50	32%	170,050
215,951 to	323,925	49,335.50	35%	215,950
323,926 to	+	87,126.75	37%	323,925
Estates and trusts				
$ 0 to	$ 2,750	$ 0	10%	$ 0
2,751 to	9,850	275.00	24%	2,750
9,851 to	13,450	1,979.00	35%	9,850
13,451 to	+	3,239.00	37%	13,450

Exemption amounts for Alternative Minimum Tax

Filing status	2022 exemption	Exemption amounts phase out at	2022 AMT income in excess of exemption	AMT rate
Single	$75,900	$539,900	First $199,900	26%
			Above $199,900	28%
Married filing jointly	$118,100	$1,079,800	First $199,900	26%
			Above $199,900	28%
Married filing separately	$59,050	$539,900	First $99,950	26%
			Above $99,950	28%

Capital gains tax rates

Taxable income	Tax rate
Less than $41,675 single / $83,350 Married Filing Jointly / $55,800 Head of Household	0%
Over $41,675 single / $83,350 Married Filing Jointly / $55,800 Head of Household *but less than* $459,750 Single / $517,200 Married Filing Jointly / $488,500 Head of Household	15%
Over $459,750 single / $517,200 Married Filing Jointly / $488,500 Head of Household	20%
Taxes on un-recaptured Sec. 1250 gains	25%
Capital gains rates on collectibles	28%

Standard deductions

Filing status	Standard deduction
Single	$ 12,950
Married filing jointly	25,900
Head of household	19,400
Married filing separately	12,950
Additional deductions for certain taxpayers (provided they don't itemize): Age 65 or blind -- $1,400 if married; $1,750 if unmarried and not a surviving spouse. Dependents may take only a limited standard deduction which cannot exceed the greater of (i) $1,150 or (ii) $400 plus earned income (up to the regular standard deduction).	

Personal exemption amount has been eliminated.

This compilation is a summary of information and data available on tax related items at www.irs.gov. This is provided for informational purposes only and should not be used for tax reporting requirements. In the event of any discrepancy between this information and related data from the Internal Revenue Service, the Internal Revenue Service data should be relied upon. New York Life, its affiliates, and agents and employees thereof cannot provide legal, tax or accounting advice. This material includes a discussion of one or more tax-related topics. This tax-related discussion was prepared to assist in the promotion or marketing of the transactions or matters addressed in this material. It is not intended (and cannot be used by any taxpayer) for the purpose of avoiding any IRS penalties that may be imposed upon the taxpayer.

Gift and estate tax

Unified tax rates:		Flat amount	+%	of amount over
$ 0 to	$ 10,000	$ 0	18%	$ 0
10,000 to	20,000	1,800	20%	10,000
20,000 to	40,000	3,800	22%	20,000
40,000 to	60,000	8,200	24%	40,000
60,000 to	80,000	13,000	26%	60,000
80,000 to	100,000	18,200	28%	80,000
100,000 to	150,000	23,800	30%	100,000
150,000 to	250,000	38,800	32%	150,000
250,000 to	500,000	70,800	34%	250,000
500,000 to	750,000	155,800	37%	500,000
750,000 to	1,000,000	248,300	39%	750,000
1,000,000 to	—	345,800	40%	1,000,000

Estate tax and lifetime gift tax applicable exclusion amount:

Basic exclusion amount: $12,060,000
Annual gift tax exclusion: $16,000 per donee
Annual gift tax exclusion for a noncitizen spouse: $164,000

Social Security

Benefits: Full retirement age is 66, if born between 1943 and 1954. Estimated maximum monthly benefit is $4,194.

Retirement earnings exempt amounts:

Before full retirement age:	$ 19,560
If full retirement age is reached during the year:	51,960
After full retirement age:	No limit

Income taxation of Social Security benefits:

To calculate the special tax base for determining whether a taxpayer's Social Security retirement benefits are subject to tax, add one-half of Social Security benefits, plus all other income (including tax-exempt).

Filing status	Tax base	% of benefits taxed
Single or head of household	$25,000 - $34,000 Over $34,000	50% 85%
Married filing jointly	$32,000 - $44,000 Over $44,000	50% 85%
Married filing separately	Depends on whether or not spouses lived together during tax year.	Up to 85%

FICA: Social Security tax paid on income up to $147,000

	% withheld	Maximum tax payable
Employee pays	6.2%	$ 9,114.00
Self-employed pays	12.4%	18,228.00

Retirement plan contribution limits

Defined Contribution Plans [IRC Sec. 415(c)] Annual Contribution Limit:	$ 61,000
Defined Benefit Plans [IRC Sec. 415(b)] Annual Benefit Limit:	245,000
401(k), 403(b), SARSEPS, and 457(b) Plans Elective deferral: Age 50+ catch-up provision:	 20,500 6,500
SIMPLE Plans Elective deferral: Age 50+ catch-up provision:	 14,000 3,000
Maximum annual compensation used to calculate contributions for most plans:	305,000

Individual Retirement Accounts

Contribution limit of $6,000, with an age 50+ catch-up provision of $1,000, subject to the following income limits:

Type	Adjusted gross income range at which allowable contributions phase out
Traditional (non-deductible)	None
Traditional (deductible)	If covered by a retirement plan: $109,000 to $129,000 - Joint $68,000 to $78,000 - Single or HOH $10,000 - Married filing separately If married and only one spouse is covered by plan: $204,000 to $214,000 - Joint
Roth	$204,000 to $214,000 - Joint $129,000 to $144,000 - Single or HOH $10,000 - Married filing separately, or active retirement plan participant. (No income limit for Roth conversions.)

Required Minimum Distributions

Uniform Lifetime Table

Calculate RMDs from qualified retirement plans and IRAs by dividing the account balance on Dec. 31 of the preceding year by the factor that corresponds to the account owner's attained age in the year of the distribution. Married owners with spouses more than ten years younger use the Joint and Last Survivor Table to calculate RMDs.

Age	Factor	Age	Factor	Age	Factor	Age	Factor
72	27.4	82	18.5	92	10.8	102	5.6
73	26.5	83	17.7	93	10.1	103	5.2
74	25.5	84	16.8	94	9.5	104	4.9
75	24.6	85	16.0	95	8.9	105	4.6
76	23.7	86	15.2	96	8.4	106	4.3
77	22.9	87	14.4	97	7.8	107	4.1
78	22.0	88	13.7	98	7.3	108	3.9
79	21.1	89	12.9	99	6.8	109	3.7
80	20.2	90	12.2	100	6.4	110	3.5
81	19.4	91	11.5	101	6.0	111	3.4

The Nautilus Group®

www.thenautilusgroup.com

The Nautilus Group® is an exclusive membership-based resource accessible to an elite group of approximately 250 experienced insurance and financial industry leaders who are firmly committed to a team planning concept. Nautilus Members work with affluent, high net worth and business owner clients, professional athletes, professional entertainers, farmers and ranchers, physicians, corporate executives and retired executives.

Nautilus provides a range of consultative services and technical case design to support its Members in presenting estate, business, charitable, insurance and retirement strategies to their clients and their clients' advisors in these key areas:

- Business succession and exit planning
- Charitable planning
- Estate and legacy planning
- Executive benefits
- Family protection
- Retirement protection
- Risk mitigation
- Tax strategies
- Wealth building
- Wealth preservation

Working hand in hand with the Nautilus staff, Member Agents present their clients with state-of-the-art planning strategies and customized case analyses designed to meet the clients' sophisticated planning objectives.

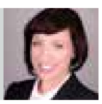
The one-on-one case design process used by Nautilus is tailored to the unique requirements of each client, achieving a better understanding of the complex needs and goals of each individual. The Nautilus team is dedicated to smart thinking, sound analysis, and experienced financial insight.

Advanced Planning Group

Through your New York Life agent, you have the opportunity to consult with a nationally known group of knowledgeable, experienced professionals trained to assess your goals and objectives, examine your current planning strategies, and offer well-researched suggestions and solutions to help you optimize your financial goals. Your agent can bring you and your advisors together with our consultants by phone, face to face, or in a virtual environment from anywhere in the country.

New York Life's Advanced Planning Group is a team of over 30 individuals with experience as legal professionals, tax professionals, insurance providers, and financial services providers. They have advanced degrees, designations, and specialized training in law, estate taxation, accounting, business, insurance, finance, and philanthropic planning. Combined, they have more than 300 years of experience assisting with wealth strategies and business planning objectives in numerous concentrations.

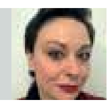
Include your agent and New York Life's Advanced Planning Group in your planning process, and help preserve and protect what you've already spent a lifetime creating. Learn more at www.newyorklife.com/apg

Stephanie C. Bagwell
JD


Douglas E. Brisco
JD, LL.M., CLU®, ChFC®, CASL®, ChSNC®, RICF®


Jaehong "Jake" Choi
JD


Chunxia (Violet) Cole
JM, LL.M., MBA

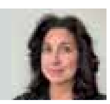

Christi Cottrell
JD


Dale Facey
JD


Filka Forkin
JD


Jesus O. Garcia Briales
JD, LL.M

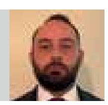

J.D. Harness
JD


Elizabeth Hill
JD


Jeanmarie Holm
JD


Frank Huang
JD, LL.M


John Irvin
CPA, CLU®, ChFC®


Amine Khater
JD


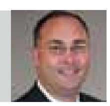
Jeff Klein
CFP®


Tony Li

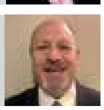

Joel S. Liu
JD

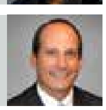

Antoinette Marshall
JD, LL.M., CPA

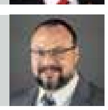

Richard C. Martin
JD, LL.M, MBA, CLU®, ChFC®, CFP®

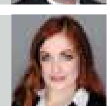

Brad Penny
LUTCF


Geoff Pfeiffer
JD, CLU®, ChFC®, AEP

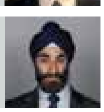

Glenn Plotkin
JD, CLU®, ChFC®, CFP®, CTFA®


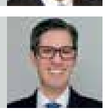
Rick Popper
JD


Luke I. Robinson
JD, CLU®


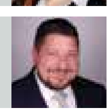
Amanda Sarp
JD


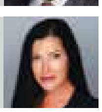
Ross Sims III
JD

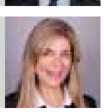

Aridaman "Ari" Shah Singh
MBA


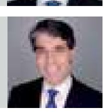
Carlos Soto Raynal
JD, TEP


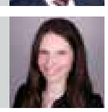
Kirrupan Theivakumar
JD


Bradley J. Trevino
JD, LL.M, MBA, MS


Sarah M. Trevino
JD, LL.M., MBA


Angela M. Wethor
JD, CPA


Adam Zack
JD


Gina M. Zippilli
JD


New York Life, its agents, and its employees do not provide tax, legal, or accounting advice. Consult your own professional advisors before implementing any planning strategies.

V6_AR08673.092022 SMRU 1615321 (exp.3.31.2023)

NEW YORK LIFE

Supplemental Appendix

Provided by Robert S. Keebler, CPA/PFS, MST, AEP (Distinguished)

New proposed regulations: Anti-clawback rule exception

§2001 - Imposition and rate of tax

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of—

(1) a tentative tax computed under subsection (c) on the sum of—

(A) the amount of the taxable estate, and

(B) the amount of the adjusted taxable gifts, over

(2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the modifications described in subsection (g) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term "adjusted taxable gifts" means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

§20.2010-1 Unified Credit Against the Estate Tax

(c) (3) Exception to the special rule—

(i) Transfers to which the special rule does not apply. Except as provided in paragraph (c)(3)(ii) of this section, the special rule of paragraph (c) of this section does not apply to transfers includible in the gross estate, or treated as includible in the gross estate for purposes of section 2001(b), including without limitation the following transfers:

(A) Transfers includible in the gross estate pursuant to section 2035, 2036, 2037, 2038, or 2042, regardless of whether all or any part of the transfer was deductible pursuant to section 2522 or 2523;

(B) Transfers made by enforceable promise to the extent they remain unsatisfied as of the date of death;

(C) Transfers described in §25.2701-5(a)(4) or §25.2702-6(a)(1) of this chapter; and

(D) Transfers that would have been described in paragraph (c)(3)(i)(A), (B), or (C) of this section but for the transfer, relinquishment, or elimination of an interest, power, or property, effectuated within 18 months of the date of the decedent's death by the decedent alone, by the decedent in conjunction with any other person, or by any other person.

(ii) Transfers to which the special rule does not apply. Notwithstanding paragraph (c)(3)(i) of this section, the special rule of paragraph (c) of this section applies to the following transfers:

(A) Transfers includible in the gross estate in which the value of the taxable portion of the transfer, determined as of the date of the transfer, was 5 percent or less of the total value of the transfer; and

(B) Transfers, relinquishments, or eliminations described in paragraph (c)(3)(i)(D) of this section effectuated by the termination of the durational period described in the original instrument of transfer by either the mere passage of time or the death of any person.

Anti-Clawback Rule Exception

The exception applies to certain special rule gifts which aren't necessarily gifts for state law purposes, but are includable in the decedent's gross taxable estate

Specifically, the anti-clawback rule exception will apply to:

- Gifts within three years of death – §2035
- Life estates – §2036
- Certain transfers taking effect at death – §2037
- Revocable transfers – §2038
- Certain life insurance proceeds – §2042
- Gifts made by enforceable promise
- Freeze partnerships – §2701
- GRATs (GRUTs, QPRTs) – §2702
- Transfers within 18 months of death that would otherwise be included above.

Anti-Clawback Rule Exceptions to the Exception

The anti-clawback rule exception won't be applied to certain nominal transfers.

- That is, the 2019 anti-clawback rules will apply to certain transfers that would otherwise be excepted.
- Specifically, transfers which are 5% or less of the value of the transfer.
- And transfers within 18 months of death, which are described in the original interest by death or a certain time period.

From the Proposed Regulations – Example 1

- Individual A made a completed gift of A's promissory note in the amount of $9 million.
- The note remained unpaid as of the date of A's death.
- The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate and is not included in A's adjusted taxable gifts.
- Because the note is treated as includible in the gross estate and does not qualify for the 5 percent de minimis rule, the exception to the special rule applies to the gift of the note.
- The credit to be applied for purposes of computing A's estate tax is based on the $6.8 million basic exclusion amount as of A's date of death.
- The result would be the same if A or a person empowered to act on A's behalf had paid the note within the 18 months prior to the date of A's death.

From the Proposed Regulations – Example 2

- Assume the facts as Example 1 except that A's promissory note had a value of $2 million and, on the same date that A made the gift of the promissory note, A also made a gift of $9 million in cash.
- The cash gift was paid immediately, whereas the $2 million note remained unpaid as of the date of A's death.
- The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate and is not included in A's adjusted taxable gifts.

- Because the $2 million note is treated as includible in the gross estate and does not qualify for the 5 percent de minimis rule, the exception to the special rule applies to the gift of the note.
- On the other hand, the $9 million cash gift was paid immediately, and no portion of that gift is includible or treated as includible in the gross estate.
- Because the amount allowable as a credit in computing the gift tax payable on A's $9 million cash gift exceeds the credit based on the $6.8 million basic exclusion amount allowable on A's date of death, the special rule applies.
- The credit to be applied for purposes of computing A's estate tax is based on a basic exclusion amount of $9 million, the amount used to determine the credit allowable in computing the gift tax payable on A's $9 million cash gift.

From the Proposed Regulations – Example 3

- Assume the facts as Example 1 except A has $2 million of DSUE.
- Assume further that A's promissory note had a value of $2 million on the date of the gift, and that A made a gift of $9 million in cash a few days later.
- The cash gift was paid immediately, whereas the $2 million note remained unpaid as of the date of A's death.
- The assets that are to be used to satisfy the note are part of A's gross estate, with the result that the note is treated as includible in the gross estate and is not included in A's adjusted taxable gifts.
- Because A's DSUE amount was sufficient to shield the gift of the note from gift tax, no basic exclusion amount was applicable to the $2 million gift and the special rule does not apply to that gift.
- On the other hand, the $9 million cash gift was paid immediately, and no portion of that gift is includible or treated as includible in the gross estate.
- Because the amount allowable as a credit in computing the gift tax payable on A's $9 million cash gift exceeds the credit based on the $6.8 million basic exclusion amount allowable on A's date of death, the special rule applies to that gift.
- The credit to be applied for purposes of computing A's estate tax is based on A's $11 million applicable exclusion amount, consisting of the $2 million DSUE amount plus the $9 million amount used to determine the credit allowable in computing the gift tax payable on A's $9 million cash gift.

From the Proposed Regulations – Example 4

- Individual B transferred $9 million to a grantor retained annuity trust (GRAT), retaining a qualified annuity interest valued at $8,550,000.
- The taxable portion of the transfer valued as of the date of the transfer was $450,000.
- B died during the term of the GRAT.
- The entire GRAT corpus is includible in the gross estate.
- Because the value of the taxable portion of the transfer was 5 percent or less of the total value of the transfer determined as of the date of the gift, the 5 percent de minimis rule is met and the exception to the special of this section does not apply to the gift.
- However, because the total of the amounts allowable as a credit in computing the gift tax payable on B's post-1976 gift of $450,000 is less than the credit based on the $6.8 million basic exclusion amount allowable on B's date of death, the special rule does not apply.
- The credit to be applied for purposes of computing B's estate tax is based on the $6.8 million basic exclusion amount as of B's date of death.

From the Proposed Regulations – Example 5

- Assume the facts as Example 4 except that B's qualified annuity interest is valued at $8 million.

- The taxable portion of the transfer valued as of the date of the transfer was $1 million.
- Because the value of the taxable portion of the transfer was more than 5 percent of the total value of the transfer determined as of the date of the gift, the 5 percent de minimis rule is not met and the exception to the special rule applies.
- The credit to be applied for purposes of computing B's estate tax is based on the $6.8 million basic exclusion amount as of B's date of death.

From the Proposed Regulations – Example 6

- Assume that the facts as Example 4 except that B's qualified annuity interest is valued at $2 million.
- The taxable portion of the transfer valued as of the date of the transfer was $7 million.
- B survived the term of the GRAT.
- Because B survived the original unaltered term of the GRAT, no part of the value of the assets transferred to the GRAT is includible in B's gross estate, and the exception to the special rule found in paragraph does not apply.
- Moreover, because the amount allowable as a credit in computing the gift tax payable on B's $7 million gift exceeds the credit based on the $6.8 million basic exclusion amount allowable on B's date of death, the special rule applies.
- The credit to be applied for purposes of computing B's estate tax is based on a basic exclusion amount of $7 million, the amount used to determine the credit allowable in computing the gift tax payable on B's transfer to the GRAT.

From the Proposed Regulations – Example 7

- Individual C transferred $9 million to a grantor retained income trust (GRIT), retaining an income interest valued at $0.
- The taxable portion of the transfer valued as of the date of the transfer was $9 million.
- C died during the term of the GRIT.
- The entire GRIT corpus is includible in C's gross estate because C retained the right to receive all of the income of the GRIT.
- Because the transferred assets are includible in the gross estate and do not qualify for the 5 percent de minimis rule, the exception to the special rule found applies to the gift.
- The credit to be applied for purposes of computing C's estate tax is based on the $6.8 million basic exclusion amount as of C's date of death, subject to the limitation of section 2010(d).

2022 Advisor Symposium

New York Life Insurance Company
51 Madison Avenue
New York, NY 10010
www.newyorklife.com