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Retirement Benefit Planning: Dealing with the Uncertainties

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By

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Retirement Benefit Planning: Dealing with the Uncertainties

By Charles A. Redd
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A. Funding Trusts with Retirement Assets

1. Multiple Beneficiaries

Special rules apply in determining who is the designated beneficiary when there is more than one beneficiary of an eligible retirement plan. These rules provide that if *any* beneficiary is not a designated beneficiary (such as estates, charities and certain other non-individuals), then there is *no* designated beneficiary. These rules also provide that if all of the beneficiaries are eligible designated beneficiaries, then *the* designated beneficiary is that beneficiary with the shortest life expectancy (that is, the oldest). Treas. Reg. § 1.401(a)(9)-4, Q&A-1; -5, Q&A-7.

2. See-Through Trusts

The benefit of using a see-through trust (referred to in the regulations as a "qualified trust") is that the life expectancy of a trust beneficiary (albeit the oldest one) is considered in calculating minimum required distributions ("MRDs") as opposed to the IRA or qualified plan's being deemed to have no designated beneficiary. Treas. Reg. § 1.401(a)(9)-4, Q&A-5. Thus, a see-through trust may reduce both the size of the MRDs and the income tax rate imposed on their receipt.

A see-through trust is a trust that satisfies the following requirements:

- The trust must be valid under local law. In making this determination the existence or requirement of trust principal is disregarded.
- The trust must have identifiable beneficiaries. A class, such as descendants, may identify the beneficiaries; they do not need to be identified by name.
- The trust must be, or by its terms become, irrevocable on or before the participant's death.
- A copy of the trust instrument (and all subsequent amendments), or a list of all beneficiaries and a statement as to the circumstances under which they will take, must be provided to the plan administrator or Trustee by October 31 of the year after the year of the participant's death.

It is not necessary to satisfy the trust documentation requirement during the participant's lifetime, unless the participant's spouse is the sole beneficiary of the trust and the participant wants the trust to be treated as the sole designated beneficiary of the account for purposes of the MRDs during the participant's lifetime. Treas. Reg. § 1.401(a)(9)-4, Q&A-6. This relieves some

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of the privacy concerns about providing a copy of the entire trust instrument. Note that a testamentary trust can be a see-through trust. Treas. Reg. § 1.401(a)(9)-5, A-7(c)(3), Ex. 2.

The determination of which beneficiaries are considered for purposes of applying the tests above is not always clear. *Cf.* PLR 201320021 (disregarding certain remote beneficiaries) and PLR 200228025 (remainder beneficiary of trusts for grandchildren terminating on their 30th birthdays included). Steiner, "IRA Trust Takers After Beneficiaries Run Out Disregarded," *LISI Employee Benefits and Retirement Planning Newsletter* #625 (August 8, 2013) at http://www.leimbergservices.com.

3. Conduit Trusts

A conduit trust is a see-through trust whose governing instrument provides that all MRDs and any other distributions from an eligible retirement plan are to be distributed immediately to the beneficiary of the trust. The Trustees are prohibited from accumulating any eligible retirement plan benefits in the trust. Consequently, no subsequent beneficiaries are considered in calculating MRDs. *See* Treas. Reg. § 1.401(a)(9)-5, A-7(c), Ex. 2. Thus, a conduit trust may reduce both the size of the required distributions (when compared to situations in which only the trust is considered in calculating MRDs) and the income tax rate imposed on their receipt. A conduit trust, however, eliminates the Trustee's "control" over retirement plan distributions.

4. Accumulation Trusts

An accumulation trust is one that permits or directs the Trustee to accumulate distributions from an eligible retirement plan. One main advantage of naming an accumulation trust as a beneficiary of an eligible retirement plan is that some or all of the distributions from the plan may be retained inside the trust, and all of the funds from the plan not distributed out of the trust will pass to the next generation (potentially estate tax-free). This is especially desirable if the surviving spouse is not expected to consume all the MRDs that would be made to the surviving spouse during his or her life if an accumulation trust were not used.

This technique must be approached with care if income tax deferral is a primary objective. The practitioner must make sure that: (a) all of the trust beneficiaries (including any contingent beneficiaries) are eligible designated beneficiaries, Treas. Reg. § 1.401(a)(9)-4, Q&A-3, Q&A-5(c); and (b) the trust at issue is a see-through trust such that the trust beneficiaries, and not the trust itself, will be considered in determining MRDs. Treas. Reg. § 1.401(a)(9)-4, Q&A-5(b). Retained plan distributions are taxed at the trust's income tax rates.

This is a particularly difficult issue when designating a dynasty trust (or multi-generation-skipping transfer tax exempt trust) as the beneficiary of an eligible retirement plan and trying to qualify for a stretch distribution. Treas. Reg. § 1.401(a)(9)-4, Q&A-1, provides that the designated beneficiary need not be specified by name in the eligible retirement plan or by the participant to qualify as a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan.

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In determining the oldest living beneficiary to use as the measuring life, certain contingent beneficiaries are considered, but a successor beneficiary who merely takes as the successor of a prior beneficiary is not considered. Treas. Reg. § 1.401(a)(9)-5, Q&A 7(b)&(c). The regulations do not indicate how many levels of contingent beneficiaries need to be considered in this context.

PLRs 200235038-41 offer one way of dealing with this problem. In these rulings, the participant designated his revocable trust as the beneficiary of his IRA and died after his RBD. The trust provided that a non-relative was to receive outright 25% of the trust property upon the participant's death. This distribution was satisfied by distributing 25% of the IRA to a separate IRA for the benefit of that non-relative. The remaining 75% of the trust was divided into equal trusts for the benefit of the participant's surviving children. Daughter A was the oldest.

Each child's trust provided that the child had a mandatory income interest and could receive discretionary principal distributions. Each child also had a broad special testamentary power of appointment. In addition, the child was prohibited from exercising that power in favor of a "Disqualified Appointee," which was defined as any person older than Daughter A, any person other than a trust or an individual or any trust that has or may have a beneficiary who is older than Daughter A. The IRS did not state what would happen to the property subject to the power of appointment if a child failed to exercise the power. The IRS ruled that the MRDs to each child's trust could be taken from the IRA based on the life expectancy of Daughter A, the oldest child of the participant. Thus, the IRS in these rulings gave its implicit approval of the above-described savings clause. Also, the disqualified appointee provisions were added after the participant's death by way of a court reformation. Practitioners therefore may not only use this approach in drafting the trust agreement but also may be able to use it effectively in post-mortem planning.

B. Working with Beneficiary Designations

1. Importance of the Plan Documents

Although the governing documents of qualified plans have to comply with all requirements imposed by federal law, they do not have to include all options allowed by the IRS regarding distributions of a deceased participant's interest. Instead, plan documents may specify their own rules regarding such distributions, as long as they are consistent with the Internal Revenue Code ("IRC") and ERISA. Administrators of qualified plans generally prefer to distribute a deceased participant's interest in the qualified plan as quickly as possible and with the most administrative ease. Therefore, certain beneficiary designations, as well as certain dispositive schemes, for qualified plan interests may not be permitted by the plan documents. *See, e.g.*, Holt, "Inflexible Rules Frustrate Families," TRUSTS & ESTATES, Oct. 2003; Choate, "Dear IRA Provider," TRUSTS & ESTATES, Sept. 2002.

Estate planners should ensure that the relevant plan documents allow for the client's desired dispositive scheme. In addition, estate planners should ensure that the beneficiary designation form is correctly completed.

➡ **Planning Point:** It is prudent for the estate planner to obtain a plan administrator's consent to the client's beneficiary designations for the client's qualified plan interests, even if the plan document does not require such consent. This approach may help avoid serious dispositive problems that could otherwise arise after the participant's death. Trytten, "Retirement Plan Myth Busters," AMERICAN COLLEGE OF TRUST AND ESTATE COUNSEL, 2011 Fall Meeting.

2. Beneficiary Designation Forms Not "Plan Documents" Requiring Compliance By Participant for Benefits to Be Paid
Mays-Williams v. Williams, 777 F.3d 1035 (9th Cir. January 28, 2015)

Decedent, Asa Williams, Sr., was a participant in two ERISA-qualified employee benefit programs at his death—the Xerox Retirement Income Guarantee Plan ("RIGP") and the Xerox Savings Plan (the "Savings Plan") (collectively, the "Xerox Plans"). Decedent named his then-spouse, Carmen Mays-Williams, as beneficiary of the Xerox Plans in 2002. Following their divorce in 2006, Decedent called and told the plan representative that he wished to name his son, Asa Williams, Jr., as beneficiary of the RIGP plan. Decedent did the same, again telephonically, for the RIGP plan in 2008 and for both Xerox Plans in January 2011. Each time Decedent was sent beneficiary forms, which he failed to complete and return to the plan administrator. Decedent died in May 2011. Decedent's former spouse as well as his son submitted claims for the retirement benefits. The plan administrator then interpleaded both parties for a determination as to the proper beneficiary.

The plan administrator must distribute benefits "in accordance with the documents and instruments governing the plan." 29 U.S.C. § 1104(a)(1)(D). The United States District Court for the Western District of Washington granted summary judgment to the former spouse under the theory that the beneficiary designation forms were plan documents that Decedent was required to complete and sign for the beneficiary properly to change from his former spouse to his son. The son appealed.

The United States Court of Appeals for the Ninth Circuit analyzed the RIGP Agreement, the RIGP summary document and the Savings Plan summary document and determined that neither document required use of the beneficiary designation form to change beneficiaries. Instead, the Ninth Circuit found that the RIGP summary document refers to the use of a form only once. The one reference requires that a married participant wishing to designate someone other than a spouse must have written spousal consent "on forms available." The Savings Plan summary document and excerpts from the Savings Plan Agreement described a similar process but without reference to any forms.

Further, the Ninth Circuit relied on an interpretation 29 U.S.C. § 1024(b)(4) from a previous ruling finding that plan documents and "other instruments under which the plan is established or operated" relate only to those documents that provide information about the plan and describe the benefits in more detail. *See Hughes Salaried Retirees Action Comm. v. Adm'r of the Hughes Non-Bargaining Ret. Plan*, 72 F.3d 686 (9th Cir. 1995). The Ninth Circuit cited

the Supreme Court decision in *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 555 U.S. 285 (2009), in which it stated that "documents and instruments governing the plan" under 29 U.S.C. § 1104(a)(1)(D) and "other instruments" under 29 U.S.C. § 1024(b)(4) overlap, for the notion that only documents providing "information as to 'where [the participant] stands with respect to the plan'" qualify as documents with which a plan administrator must comply in awarding benefits. Additionally, the plan documents on record did not reference any required forms for *unmarried* persons. (Emphasis added.) Accordingly, the beneficiary designation forms were not plan documents governing benefit awards.

Decedent's former spouse then argued that, even if beneficiary designation forms are not "plan documents," if a plan grants the administrator discretion to determine benefit eligibility, then the exercise of such discretion should be upheld as reasonable. The Ninth Circuit rejected the former spouse's contention that either Xerox or the plan administrator exercised any discretion. On the contrary, the plan administrator failed to exercise any discretion as evidenced by its decision to interplead the former spouse and the son into a court action rather than determine whether Decedent's telephonic designation was valid. The Ninth Circuit concluded that none of the plan documents explicitly required unmarried persons to use the beneficiary designation form but the plan documents did encourage participants to call Xerox to change beneficiaries. Thus, the Ninth Circuit concluded that Decedent substantially complied with the plan documents by calling Xerox about his intentions. The Ninth Circuit therefore reversed the District Court's granting of summary judgment.

C. Rollovers and Trustee-to-Trustee Transfers: Not Nearly As Simple As You Think

1. Surviving Spouse as Beneficiary of Eligible Retirement Plan Assets

The surviving spouse has the right to rollover an eligible retirement plan of the predeceased spouse (such as qualified retirement plans, IRC § 403 annuities, simplified employee pension plans (also known as "SEPs"), governmental IRC § 457 plans and IRAs) to another eligible retirement plan under IRC § 402(c)(9) or may treat an IRA of the predeceased spouse as the surviving spouse's own IRA under Treas. Reg. § 1.408-2(b)(7)(II); -8, Q&A-5(a). Under either situation, distributions can be deferred until the surviving spouse reaches age 70½. IRC § 401(a)(9)(B)(iv)(I); Treas. Reg. § 1.401(a)(9)-3, Q&A-3(b). An IRA may receive a rollover distribution even if the surviving spouse is ineligible to make contributions to an IRA. Furthermore, the surviving spouse may also name a beneficiary for any remaining benefit at his or her death, regardless of whether the surviving spouse dies before or after his or her required beginning date ("RBD"). The surviving spouse may engage in this activity even if he or she has received distributions as a beneficiary after the participant's death. Treas. Reg. § 1.408-8, Q&A-5 to Q&A-7.

Whenever the participant's spouse is less than 10 years younger than the participant, there is a significant difference between the distribution period available to the surviving spouse if the surviving spouse rolls over an eligible retirement plan (and is able to recommence the lifetime distribution period under the Uniform Lifetime Table under Treas. Reg. § 1.401(a)(9)-9, Q&A-2) and the life expectancy calculation (under IRC § 72), which is the distribution period

available to the surviving spouse (whether or not the surviving spouse is less than 10 years younger than the participant) if he or she simply takes the minimum required distributions ("MRDs") as a designated beneficiary after the participant's death without implementing a rollover. The Uniform Lifetime Table is available to the participant or the surviving spouse and is based on the life expectancy of the designated beneficiary or the participant along with the life expectancy of a person 10 years younger.

Compare the distribution period, MRDs and the value of the IRA under the Uniform Lifetime Table for a person aged 70 - 75, with the life expectancy calculation of a person aged 70 - 75.

Uniform Lifetime Table Calculation				**Life Expectancy Calculation**			
Age	***Account Value***	***Distribution Factor***	***MRD***	***Age***	***Account Value***	***Distribution Factor***	***MRD***
70	100,000	27.4	3,650	***70***	100,000	17	6,250
71	96,350	26.5	3,636	***71***	94,118	16.3	5,882
72	92,714	25.6	3,622	***72***	88,344	15.5	5,774
73	89,092	24.7	3,606	***73***	82,644	14.8	5,700
74	85,486	23.8	3,592	***74***	77,060	14.1	5,465
75	81,894	22.9	3,576	***75***	71,595	13.4	5,343
Total Distributions			***21,682***				***33,748***
Balance in Account	***78,318***				***66,252***		
		Percent Difference from Uniform Table			***(15.4%)***		***56%***

As can be seen, when distributions are based on the Uniform Lifetime Table, a larger balance is left to the ultimate beneficiaries, such as children or charities. The results are far more dramatic when one takes into consideration account earnings, which compound tax-free within the eligible retirement plan. Thus, the Uniform Lifetime Table will be preferable as long as the surviving spouse will not need additional distributions for his or her support.

If the surviving spouse is under age 59½, treating an IRA as his or her own or rolling over his or her interest in an eligible retirement plan may not be an appropriate option if the surviving spouse needs any of the IRA funds for the surviving spouse's support before reaching that age. In general, if distributions are received, the surviving spouse would be subject to the same penalties as any IRA participant for early distributions. IRC § 72(t)(1). Also, if the surviving spouse were to die before reaching age 70½, the surviving spouse would be treated as the IRA owner, rather than as a beneficiary. IRC § 408(d). Thus, if he or she has not designated

a succeeding beneficiary of the IRA, the IRA will be distributed after the surviving spouse's death as if there were no beneficiary (*i.e.*, to his or her estate). Treas. Reg. § 1.401(a)(9)-3, Q&A-5. The MRDs will be higher in this situation and the assets will be subject to the surviving spouse's creditors.

One of the exceptions to the 10% penalty for early distributions is payment to a beneficiary by reason of a participant's death. IRC § 72(t)(2)(A)(ii). One strategy for taking advantage of rollover opportunities for the younger surviving spouse is to keep in the participant's IRA only that amount of property needed to provide for the surviving spouse's support before he or she reaches age 59½ and to distribute that portion of the participant's IRA to the surviving spouse in a manner that satisfies the applicable post-death MRD rules and meets the surviving spouse's support needs. The surviving spouse can then rollover the balance of the IRA.

Another exception to the 10% tax on early distributions is payment of the account to the beneficiary in equally or substantially equal installments over the life expectancy of the participant or over the joint life expectancy of the participant and the life of his or her designated beneficiary. IRC § 72(t)(2)(A)(iv). Thus, another way for a surviving spouse to take advantage of rollover options before age 59½ without incurring the 10% penalty is to rollover the entire account and immediately begin distributions over his or her remaining life in a manner that would qualify under this section. The downside of this strategy is that the surviving spouse's ability to change the amount of distributions during the rest of his or her life is limited. *See* Rev. Rul. 2002-62, 2002-42 I.R.B. 710.

The latest Priority Guidance Plan states that the IRS is considering or soon will be considering "[r]egulations on exceptions to additional tax under § 72(t) on early distributions from retirement plans and IRAs." Dept. of the Treasury, "Joint Treasury, IRS 2015-2016 Priority Guidance Plan," (July 31, 2015).

2. Ability of Nonspouse Beneficiaries to Rollover Distributions From Eligible Retirement Plans

Nonspouse beneficiaries may rollover a distribution from an inherited qualified plan to an inherited IRA, thereby allowing them to defer distributions. Such a non-spousal rollover must be through a direct Trustee-to-Trustee transfer. The MRD rules with regard to inherited IRAs will apply to such rolled over distributions. The recipient IRA must be titled in the name of the participant and established for the purpose of receiving this distribution. The nonspouse beneficiary must qualify as a designated beneficiary. IRC § 402(c)(11)(A).

Transfers may also be made to inherited IRAs that are held by "see-through" trusts (discussed above) for the benefit of the nonspouse beneficiaries. IRC § 402(c)(11)(B); *see also* Notice 2007-7, 2007-5 I.R.B. 395. However, neither an estate nor a trust that is not a see-through trust will be able to use a nonspouse beneficiary rollover. Choate, LIFE AND DEATH PLANNING FOR RETIREMENT BENEFITS, p. 190 (Digital Ed. 2015).

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The MRD rules applicable to the inherited IRA that received the direct rollover will generally be the same as the rules that applied to the qualified plan assets while they were still in the original plan. Notice 2007-7, A-19; Treas. Reg. § 1.401(a)(9)-3, Q&A-1, -3. However, if a participant in a qualified plan dies before his or her RBD, and the nonspousal beneficiary rollover takes place by the end of the first calendar year following the participant's death, MRDs may be received from the inherited IRA over the beneficiary's life expectancy rather than over five years from the date of the participant's death. If the rollover occurs after the end of the first year following the participant's death before his or her RBD, the rolled over qualified plan interest must be distributed out of the transferee IRA by the end of the fifth year following the year of the participant's death. Thus, if a participant dies late in any given year before his or her RBD, there will be very little time to complete a rollover and obtain the maximum benefit for the client. If the nonspousal beneficiary misses this one-year cut-off, there does not seem to be any reason to do a rollover in this situation unless there is a need to increase the mandatory distributions from the retirement asset. No rollover at all is allowed after the end of the fourth year following the year of the participant's death before his or her RBD. Notice 2007-7, A-17.

If the participant dies on or after his or her RBD, the MRD under the recipient IRA for any year after the year of death must be determined using the same applicable distribution period as would have been used under the qualified plan if the direct rollover had not occurred. Notice 2007-7, A-19.

The Obama Administration has proposed removing the requirement that a non-spouse beneficiary of a retirement plan or IRA may only accomplish a rollover via a direct Trustee-to-Trustee transfer and allowing such beneficiary to take a distribution from such account and transferring it to a non-spousal inherited IRA within 60 days. The beneficiary would be required to inform the new IRA provider that the new IRA is being established as an inherited IRA. *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals*, Department of the Treasury (February 2, 2015).

D. Using IRAs and Qualified Retirement Plans for Charitable Giving

1. In General

One of the main disadvantages of holding retirement assets, which are considered income in respect of a decedent ("IRD") assets, is potential double taxation. The individual who receives the IRD, or the decedent's estate if the IRD is distributed to the estate, must include the IRD on such recipient's income tax return for the year in which it was received. Additionally, IRD assets are included in a decedent's gross estate for federal estate tax purposes and, therefore, are subject to estate tax. Although the recipient can claim an income tax deduction for the federal estate tax attributable to the IRD, the effect of the double taxation is still to tax IRD assets at a relatively high rate.

The use of retirement benefits such as qualified plans and IRAs for charitable giving after death is tax efficient. A qualified charity is both income and estate tax exempt, and so the payment of such benefits to charity is tax free. *See, e.g.,* Choate, "The 201 Best and Worst

Planning Ideas for Your Client's Retirement Benefits," 32nd ANNUAL KANSAS CITY ESTATE PLANNING SYMPOSIUM (2013).

➡ **Planning Point:** The most common sources of IRD are distributions from a decedent's IRA, pension plan, 401(k) or profit-sharing plan.

EXAMPLE: Assume a client with a taxable estate wants to make a gift at his death of $100,000 to charity, and $100,000 to his niece. The client has a $100,000 IRA. Below are the net after-tax consequences if the IRA is given to charity, or if the IRA is given to the niece. Assume that the niece is in a 39.6% income tax bracket. Paying the IRA to the niece produces a 40% estate tax on the client's gift to the niece, and an 29.6% income tax on the IRA payable to the niece, after the applicable income tax deduction under IRC § 691(c).

IRA to Charity:	IRA to Niece:
Charity Receives: $100,000	Charity Receives: $100,000
Niece Receives: $60,000	Niece Receives: $30,400
IRS Receives: $40,000	IRS Receives: $69,600

While this example does not take into account any benefit the niece might derive from the income tax deferral she could enjoy if she were named as the beneficiary of the IRA, in many cases the benefits of using IRD to fund charitable gifts outweigh even these additional benefits. The advantage applies equally to all items of IRD, including non-qualified employee benefit plans and stock options.

2. Naming a Charitable Remainder Trust as Beneficiary

The Trustee of a charitable remainder trust ("CRT") created under a person's Will or revocable trust instrument can be designated as primary or contingent beneficiary of such person's qualified retirement plan or IRA. The decedent can give other assets that are not subject to income tax to other, non-charitable beneficiaries.

The CRT does not realize taxable income upon receipt of the proceeds because the CRT is a tax-exempt entity. IRC § 664(c)(1). The character of distributions out of the qualified retirement plan or IRA is irrelevant with respect to the CRT (unless the CRT has unrelated business taxable income under IRC §§ 511-515). Because the IRD is distributed to the CRT, neither the donor's estate nor the donor's heirs will recognize taxable income when the IRD is distributed to the CRT.

The proceeds of the qualified plan or IRA in the CRT will remain and grow on an income tax exempt basis, the same as if such proceeds had remained in the qualified plan or IRA. Distributions to the non-charitable beneficiary will be subject to ordinary income tax, for the most part, again, the same as if they were paid from a qualified plan or IRA.

There is no gift tax consequence to this transaction so long as the beneficiary designation remains revocable. Treas. Reg. § 25.2511-2(c). Also, the decedent's estate will be entitled to an unlimited estate tax charitable deduction for the actuarial value of the remainder interest in the CRT at the decedent's death. Treas. Reg. § 20.2055-2(e)(2)(v).

If the spouse of the participant or IRA owner has an interest in the CRT and is the only noncharitable beneficiary, the marital deduction will shelter from estate tax the actuarially computed value of that interest, and the charitable deduction can be claimed for the balance of the value of the remaining trust property. IRC §§ 2056(b)(8), 2055(e)(2)(A).

If there are noncharitable beneficiaries other than the spouse of the participant or IRA owner, the charitable deduction can be claimed only with respect to the actuarially computed value of the charitable remainder interest, and estate tax may be due on the actuarially computed value of all noncharitable interests. In this case, naming a CRT as the beneficiary will not eliminate estate taxes, but it will allow the children of the participant or employee to receive a benefit from the IRD assets, and the children will be taxed only on the distributions from the CRT rather than on all of the income from the IRD assets.

3. Use of IRA Assets to Satisfy Charitable Bequests is IRD Taxable to Trust
PLR 201438014 (September 14, 2014)

Upon his death, Decedent owned an individual retirement account ("IRA") that named Decedent's trust (the "Trust") as beneficiary. The Trust provided for two pecuniary bequests to charity, which exceeded the value of the Trust's non-IRA assets. The Trust was reformed by court order in an effort to ensure that the use of the IRA assets to satisfy the charitable bequests would not be treated as income in respect of decedent ("IRD") includible in the Trust's income or, in the alternative, to qualify the Trust as a charitable trust.

Pursuant to IRC § 642(c)(1), a trust may deduct for income tax purposes such amounts of its gross income as are paid, pursuant to the trust instrument, for charitable purposes within the meaning of IRC § 170(c). IRC § 691(a)(1) includes IRD in the gross income of the person who acquires the right to receive the IRD. In this case, because the Trust was the beneficiary of the IRA, the IRA distributions (which constituted IRD) were includable in the Trust's gross income.

In *Kenan v. Commissioner*, 114 F.2d 217 (2d Cir. 1940), the United States Court of Appeals for the Second Circuit held that satisfaction of a pecuniary legacy with property will be treated as a sale or exchange of property. *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967), held that the state supreme court "is the best authority on the underlying substantive rule of state law to be applied in [a] federal matter." Consequently, the IRS said, the Tax Court would not be bound by a state trial court decision as to whether satisfying pecuniary charitable bequests from IRA assets would be treated as IRD to the Trust. In addition, the IRS found no authority holding that a modified trust instrument will govern where the modification did not arise from conflict.

The IRS concluded that: (a) IRA distributions would be taxable income to the Trust, as and when received; and (b) because the governing instrument of the Trust did not require

satisfaction of the charitable bequests from the Trust's gross income, the Trust was not entitled to an income tax deduction for any payments it made in such satisfaction.

Virginia MCLE Board

CERTIFICATION OF ATTENDANCE (FORM 2D)

MCLE requirement pursuant to Paragraph 17, of Section IV, Part Six, Rules of the Supreme Court of Virginia and the MCLE Board Regulations.

INSTRUCTIONS

Certify Your Attendance Online at www.vsb.org

Complete this Certification. Retain for two years.
MCLE Compliance Deadline - October 31. MCLE Reporting Deadline - December 15.
A $100 fee will be assessed for failure to comply with either deadline.

Member Name: ____ **VSB Member Number:** _______________________

Address: ____ **Daytime Phone:** _____________________________

____ **E-mail Address:** _____________________________

____
City **State** **Zip**

Course ID Number: **NDD0001**

Sponsor: **Cannon Financial Institute**

Course/Program Title: **Retirement Benefit Planning: Dealing With The Uncertainties**

Live Interactive *Approved CLE Credits (Ethics Credits): **1.5** **(0.0)**

Date of telephone/webcast:_____________________________ **Location(s):** ______________________________________

By my signature below I certify

___ I attended a total of ______________ (hrs/mins) of **approved CLE**, of which (______) (hrs/mins) were in **approved Ethics**. Credit is awarded for actual time in attendance (0.5 hr. minimum) rounded to the nearest half hour. (Example: 1hr 15min = 1.5hr)

___ The sessions I am claiming had written instructional materials to cover the subject.

___ I participated in this program in a setting physically suitable to the course.

___ I was given the opportunity to participate in discussions with other attendees and/or the presenter.

___ I understand I may not receive credit for any course/segment which is not materially different in substance than a course/segment for which credit has been previously given during the same completion period or the completion period immediately prior.

___ I understand that a materially false statement shall be subject to appropriate disciplinary action.

* NOTE: A maximum of 8.0 hours from pre-recorded courses may be applied to meet your yearly MCLE requirement. Minimum of 4.0 hours from live interactive courses required.

_____________________ ____
Date Signature

Questions? Contact the MCLE Department at (804) 775-0577

If not certified online, this form may be mailed to:

Virginia MCLE Board
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026
Web site: www.vsb.org

[Office Use Only: Teleconference]

Pennsylvania Continuing Legal Education Board

601 Commonwealth Avenue, Suite 3400 ▪ P.O. Box 62495 ▪ Harrisburg, PA 17106-2495
(800)497-2253, (717)231-3250 ▪ FAX (717)231-3251
www.pacle.org
E-mail: pacleb@pacle.org

CREDIT REQUEST FORM

BA_____

This form is to be used when you have attended a course that is not sponsored by an AccreditedProvider. Lawyers seeking Pennsylvania CLE credits must complete Section B of this form and return it to PACLE, along with a Uniform Certificate of Attendance, if available, and a check made payable to PACLE for the $1.50, per credit hour attendance fee payment. Please refer to Section C to calculate the correct attendance fee payment.

SECTION A : Course Information

Provider: 1854 Cannon Financial Institute

Course: 75606 Retirement Benefit Planning: Dealing with the Uncertainties (450775)

Date: 11/17/2015 13:00 **Location:** Alternate Delivery

Total CLE Credit Hours: Maximum: 1.50 = 1.50S

SECTION B : Lawyer Information

Lawyer Name ______________________________ PA Lawyer ID __________

Address ____

City ________________________________ State _________ Zip ____________

By signing below, I certify that I attended the activity described above and am entitled to claim:
_____ Substantive

______________________________ ____________________
Signature Date

I am enclosing check #__________________ for $__________

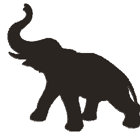
NOTE: If you attended the maximum 1.50 credit hours for this course, please enclose $3.00 attendance fee payment. See Section C below for calculation.

SECTION C : Attendance Fee Calculation

Pennsylvania grants one (1) CLE credit for each 60 minutes of attendance at an approved course. Pennsylvania requires a $1.50 per credit hour attendance fee payment. This $1.50 fee is also required for any portion of a credit hour. We accredit only programs that are at least one hour long; in addition, we accredit only in half hour increments. Please refer to the example below when calculating your attendance fees.

1 hour = 1.50	1.5 to 2 hours = $3.00	2.5 to 3 hours = $4.50	3.5 to 4 hours = $6.00
4.5 to 5 hours = $7.50	5.5 to 6 hours = $9.00	6.5 to 7 hours = $10.50	7.5 to 8 hours = $12.00

etc...



CANNON
FINANCIAL INSTITUTE

Certificate of Attendance

____
(Participant Name)

____
(Colorado Attorney Registration #)

Has successfully completed the Cannon Financial Institute, Inc. course:

Retirement Benefit Planning: Dealing with the Uncertainties

(745666)

November 17, 2015

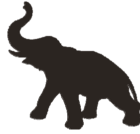
Laurie Frye
Professional Education Coordinator

Continuing Legal Education Credits for this course are as follows:

Colorado – 2 General Credits

****As required by the State of Colorado, attorneys must submit their own credits.

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
PO Box 6447, Athens, Georgia 30604



CANNON
FINANCIAL INSTITUTE

Certificate of Attendance

____
(Participant Name)

____
(Attorney Bar # or Social Security #)

Has successfully completed the Cannon Financial Institute, Inc. course:

Retirement Benefit Planning: Dealing with the Uncertainties

November 17, 2015

Laurie Frye
Laurie Frye
Professional Education Coordinator

Continuing Legal Education Credits for this course are as follows:

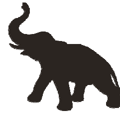
The following states have been approved for 1.5 hours of General Credit: (Course number is indicated in parenthesis):Alabama, Arkansas (TWE48112), California, Delaware, Georgia, Idaho, Illinois, Iowa (161413), Kentucky (151766), Louisiana, Maine (036033), Minnesota (199864), Mississippi, Montana (25838), Nebraska(101895), Nevada (6511), New Mexico, New York, North Carolina, North Dakota, Oregon (1048* 216), Pennsylvania, South Carolina, Tennessee (Distance Ed), Texas (901306281), Utah , Vermont, Virginia, Washington, Wisconsin , & Wyoming.

These states have been approved for the following General Credit: Colorado – 2 hours, Florida - 2 hours (1407644N), Missouri –1.8 hours, Oklahoma – 2 hours, West Virginia – 1.8 hours

The following states either do not require/do not accept outside CLE Credit/or do not accept teleconference calls for CLE Credit: District of Columbia, Hawaii, Maryland, Massachusetts, Michigan & South Dakota
The following states have special circumstances:
Alaska-Attorneys can use this certificate to submit to Alaska State Bar
Arizona-On honor system
Indiana & Ohio-Site Coordinators must apply for credit as the sponsor in order for participants to receive credit
Kansas–Attorney or Site may apply 30 days prior to program
New Hampshire- *NHMCLE does not approve or accredit CLE activities for the NH Minimum CLE requirement. NH attendees must self-determine whether a program is eligible for credit and self-report their attendance.*
New Jersey-Attorneys can use this certificate to submit to New Jersey State Bar for 1.5 General credits (Reciprocity Rule)
New York–Attorneys may use this certificate to report their attendance as it is accredited by Approved NY Jurisdictions: AL, AR, CO, DE, GA, KY, LA, MS, NM, NC, ND, OK,. Type of credit: Areas of Professional Practice, 1.5 Credits
* In order for PA attorneys to receive credit they must listen to the teleconference in a live classroom setting. The teleconference site must also be listed on the PACLE website and the site must be open to any PA attorney who desires to listen to the program. Call PACLE at 1-800-497-2253 with questions on website listing.

****As required by the following State Bars, and in order to obtain CLE in these states, Cannon will submit the mandatory attendance rosters for the attorneys seeking CLE credits **ONLY** in the following states: Alabama, Delaware, Georgia, Idaho, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, West Virginia and Washington. ****

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
PO Box 6447, Athens, Georgia 30604



CANNON

FINANCIAL INSTITUTE

Certificate of Attendance

____

(Participant Name)

Has successfully completed the Cannon Financial Institute, Inc. course:

Retirement Benefit Planning: Dealing with the Uncertainties

November 17, 2015

Laurie Frye
Professional Education Coordinator

Continuing Education Credits for this course are as follows:

- **Certified Public Accountant** — **1.5 credit hours**
  In accordance with the National CPE Registry of CPE sponsors, CPE credits have been granted based on a 50-minute hour. For information regarding available CPE credits please visit http://cpemarket.nasbatools.com/index.
  Instructional delivery method: Group-Live
  NASBA #103655; Field of Study –Specialized Knowledge & Application
- **Enrolled Agent (IRS)** — **2.0 credit hours**
  Cannon is designated as a qualified education sponsor by the IRS and can offer continuing education credit to Enrolled Agents. Cannon's agreement with the IRS' Office of Professional Responsibility does not constitute an endorsement by the IRS as to the quality of the programs or their contribution to the professional competence of the enrolled individual.
- **Certified Financial Planner (CFP™)** — **1.5 credit hours**
  Course #199078
- **Accredited Fiduciary Investment Manager (AFIM™)** — **1.5 credit hours**
- **Certified Wealth Strategists (CWS®)** — **2.0 credit hours**
- **Certified Investment Management Analyst (CIMA®)** — **1.5 credit hours**
  Course #15CFI010
  If you hold the CIMA®, CIMC® or CPWA® certification, you may report this pre-accepted CE program online by logging into your My IMCA account at www.imca.org/user
- **Certified Trust Financial Advisor (CTFA™)** — **2.0 credit hours**

Fiduciary Law	0
Taxes	0
Investments	0
Financial Planning	2
Ethics	0

- **Certified IRA Services Professional (CISP™)** — **2.0 credit hours**
- **Fiduciary Investment Risk Management Association (FIRMA®)** — **2.0 credit hours**
- **Chartered Life Underwriter & Chartered Financial Consultant** — **1.5 credit hours**
  (**No Individual State Insurance Credit Available)

Any questions regarding CE credit, please contact Laurie Frye at (706) 353-3346.
Fax (706) 353-3994, Email lfrye@CannonFinancial.com
PO Box 6447, Athens, Georgia 30604

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

To be Completed by the Provider

Provider: Cannon Financial Institute (CA Provider #12179)

Subject Matter/Title: Retirement Benefit Planning: Dealing with the Uncertainties

Date and Time of Activity: November 17, 2015 1:00-2:30 PM ET, 12:00-1:30 PM CT, 11:00AM-12: 30 PM MT, 10:00AM- 11:30 AM PT

Location: Teleconference

Length of Presentation: 1.5 Hours

ELIGIBLE CALIFORNIA MCLE CREDIT:

TOTAL HOURS: 1.5

Legal Ethics: 0

Elimination of Bias in the Legal Profession:

Prevention, Detection and Treatment of Substance Abuse:

To Be Completed by the Attorney after Participation in the Above-Name Activity

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE credit hours:

TOTAL HOURS: ________________________

(You may not claim credit for the following sub-fields unless the provider is granting credit in these areas as listed above.)

Legal Ethics:______________________________

Elimination of Bias in the Legal Profession:______________________________

Prevention, Detection and Treatment of Substance Abuse: ______________________________

Attorney Signature:

REMINDERS: Keep this record of attendance for four years. In the event that you are audited by the State Bar, you may be required to submit this record of attendance. Send this to the State Bar only if you are audited. You must sign in on the Official Record of Attendance for California MCLE maintained by this provider in order for these hours to qualify for California MCLE credit.

Thank you for attending this event.

Today's event features an online, post-event evaluation form. To send us your feedback, please click on the link below, or type the URL into your web browser's address bar.

http://eval.krm.com/eval.asp?id=21899

Your feedback and comments are very important to us. Thank you in advance for taking the time to complete this evaluation!