THE USE OF THE IRA TRUST FOR ESTATE PLANNING AND ASSET PROTECTION

PHOENIX TAX WORKSHOP

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I. INTRODUCTION

Current baby boomers are now retiring and have, as a substantial part of their assets, either qualified plan benefits that have been rolled over to IRAs or otherwise have IRAs that contain substantial assets. Often times, IRA assets are the bulk of a client's net worth.

With recent changes in law which authorize greater flexibility for the use of IRAs, including Roth IRAs, this trend will only continue to grow.

Where the client has significant IRA assets, and especially where a client's estate might well be subject to estate taxes, there are a number of planning opportunities to consider. For example, the options available include:

- Whether the client should convert, during his lifetime, his existing IRA to a Roth IRA, especially where there are non-IRA assets to pay the income tax.
- Whether the client should do a "death-bed" conversion of his IRA to a Roth IRA.
- Whether the client should name a spouse as the beneficiary.
- Whether the client should name individuals other than a spouse as beneficiaries and, if so, how this should be done.
- Whether the client should name a trust as the beneficiary of the IRA.
- Whether the client should plan on stretching out the distributions of the IRA after his death to the maximum extent possible.

It is principally these last two options – instead of designating a spouse or children as beneficiaries of the IRA, the Owner[1] designates a specially tailored revocable trust to receive the benefits at the death of the client – on which this Outline focuses.

This type of trust is referred to by a number of names; I will refer to it simply as the IRA Trust.[2] The use of the IRA Trust as the beneficiary of IRA benefits was made possible by the enactment of a number of pieces of federal legislation, IRS rulings and a U.S. Supreme Court decision that now exposes inherited IRAs to claims of creditors.

II. PENSION PROTECTION ACT OF 2006

Effective January 1, 2007, the Pension Protection Act ("PPA") significantly widened the application of the IRA Trust. Previously, the IRA Trust had no application to a company retirement plan unless and until the worker/participant reached normal retirement age and took an "in service" distribution or retired, and then rolled over the company plan into an IRA. Moreover, the plans' own rules usually forced a non-spouse beneficiary to take the entire taxable distribution much more quickly than what was otherwise required under the Required Minimum Distributions ("RMD") rules.

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[1] For purposes of this Outline, the term "Owner" is meant to refer to the employee participant of a qualified plan or the person who created and funded the IRA account.

[2] Other names include, *inter alia*, IRA Living Trust, IRA Inheritor's Trust, IRA Stretch Trust, IRA Inheritance Trust, or StandAlone Retirement Trust.

The PPA allows a plan participant to take advantage of the stretch-out available through the IRA Trust even if he is still working but has not reached normal retirement age, or has retired but left these moneys in the company plan. The PPA further permits non-spouse beneficiaries of company plans, or a trust established on the beneficiaries' behalf, to do a rollover into an "inherited IRA" after the plan participant passes away.

Thus, a company plan participant can set up the IRA Trust now, make it the beneficiary of the plan and let the IRA rollover occur later.

III. HISTORICAL TREATMENT OF IRAS *VIS À VIS* QUALIFIED PLANS

Historically, IRAs had not been accorded the same benefits and protections afforded to qualified plan benefits. Unlike qualified plans that are governed by and protected by the provisions of ERISA, IRAs are not ERISA-covered plans.

A. IRS Lien Rights.

Arizona law (A.R.S. §33-1126) exempts an individual's IRA and other retirement plan from execution by a state court creditor. This statutory provision does not stop the IRS from levying such accounts. However, the IRS can only attach its lien to qualified plan benefits that are in current-pay status. See *In re Connor*, 27 F.3d 365 (9th Cir. 1994). It is the unqualified right to receive these future payments that constitutes "property of the taxpayer" which is subject to the federal tax lien. *Fried v. New York Life Ins. Co.*, 241 F.2d 504 (2d Cir. 1957).[3] Because IRA benefits are generally available to the Owner, they are always in current-pay status and thus are "property of the taxpayer" available to be liened.

B. The 2005 Bankruptcy Act.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Bankruptcy Act") clarified how certain Bankruptcy Code rules apply to employee benefits and enhances the protection of plan benefits in bankruptcy.

Individual debtors' retirement plan benefits had been protected from creditors to varying degrees under several U.S. Supreme Court decisions. The Bankruptcy Act enhances those protections. The Bankruptcy Act also extends protection to arrangements that are not subject to ERISA, but only to a limited degree.

For instance, a debtor can exclude from the debtor's bankruptcy estate any benefits under a fund or account that are exempt from taxation under IRC Sections: 401(a) (tax-qualified plans); 403 (tax-sheltered annuities); 414 (governmental and church plans); 457 (not-for-profit and state and local government plans); and 501(a) (plans funded solely with employee contributions). The Bankruptcy Act also protects a debtor's plan contributions (such as 401(k) deferrals) that were withheld from the debtor's pay but were not deposited in the plan's trust before the bankruptcy filing.

The Bankruptcy Act extends the exclusion to plans under Section 408 (IRAs) but limits the exclusion for IRA benefits to $1 million. The limit applies to and aggregates Roth

[3] Although not exempt from levy by statute, the IRS has determined for policy reasons that payments from qualified pension, profit-sharing, stock bonus, IRA, and Keogh plans generally are subject to levy only in flagrant cases. IRM 5.11.6.2:(2) (3-15-05).

IRAs as well.[4] The $1 million limit on the IRA exclusion is determined without regard to amounts rolled over from certain employer tax-favored retirement plans.

The Bankruptcy Act gives a bankruptcy court the power to increase the limit if "the interests of justice so require" and the limit will be adjusted in the future for inflation. (Note that in 2005, the U.S. Supreme Court ruled, in *Rousey v. Jacoway*, that debtors can exempt IRAs from their bankruptcy estates as payments "on account of . . . age" but only to the extent that such IRAs are "reasonably necessary" to support the IRA holder or his or her dependents.)

C. Participant Loans.

A participant of a qualified retirement plan is allowed within certain limits to borrow from the account; an IRA Owner has no such right to borrow funds. Any such loan would be a prohibited transaction.

D. Severe Consequences of Prohibited Transactions.

For a typical qualified plan, if the plan engages in a prohibited transaction, such misconduct would ordinarily not result in the disqualification of the plan. The IRS certainly would impose financial sanctions on the plan and perhaps the plan fiduciary. However, unless there was a pattern of misconduct that demonstrated that the plan was not being honored, disqualification is the sanction of last resort for the typical pension or profit sharing plan. Moreover, if a plan is disqualified, it can regain tax qualified status by correcting the defects through the Employee Plans Compliance Resolution System ("EPCRS").

This leniency is unavailable to IRAs. If the owner of an IRA engaged in prohibited transactions, no matter how innocently, the IRA evaporates (*e.g., Peek v. Commissioner,* 140 T.C. 216 (2013) (IRA owner guaranteed debt of IRA in purchasing business); *Ellis v. Commissioner*, TC Memo 2013-245) (plan owner paid a management fee to manage company partially owned by IRA)).

The conduct condemned in *Peek* and *Ellis* has the effect of retroactively disqualifying the IRA from the date of the prohibited transaction, causing the immediate recognition of income on the IRA assets as of that date and usually also implicating the substantial underpayment of tax penalties under Section 6662 for the affected year.

Moreover, where there were past prohibited transactions, the IRA can be attacked in bankruptcy with the loss of creditor protection even where the prohibited transaction occurred years before the bankruptcy and the prohibited transaction had long ago been cured. See *In re: Ernest W. Willis* (07-11010 BKC-PHG (SD Fla. 2009).

E. The U.S. Supreme Court's decision: *Clark v. Rameker*.

It had been assumed that all IRAs, including inherited IRA accounts, were exempt from creditor claims; after all, that is precisely what the 2005 Bankruptcy Act provides. In the case of an inherited IRA, as discussed in Section III B.2.b. *infra*, the beneficiary is given the right to stagger withdrawals (RMDs) over the beneficiary's life expectancy. This feature is

[4] This limitation does not apply to Simplified Employee Plans (SEPs) or Savings Incentive Match Plan for Employees of Small Employers ("SIMPLE") IRAs.

used to defer income taxes into post-retirement years when the beneficiary is in a lower marginal tax bracket. Like a regular IRA and its owner, the beneficiary could elect to take distributions greater than those mandated by the rules for RMDs but was not obligated to do so. So long as the funds remained in the IRA account, the account was assumed to be creditor protected.

The Supreme Court case carved out an exception to this general rule for IRA accounts that were inherited from a deceased owner. In *Clark v. Rameker*, 34 S.Ct. 2242 (2014), the debtor filed for bankruptcy and listed an inherited IRA (received in 2001) as an exempt asset, relying on Section 522(b)(3)(C) of the Bankruptcy Code, which exempts "retirement funds" from the bankruptcy estate.

The Supreme Court ruled that an inherited IRA is part of the debtor's bankruptcy estate subject to creditor claims. In formulating the carve-out for inherited IRAs, the Court noted several key differences between inherited and traditional IRAs. In particular, the holder of an inherited IRA (i) may not invest additional funds into the IRA account, and (ii) must take Required Minimum Distributions no matter how far away he or she personally may be from retirement. In addition, the beneficiary has the ability to withdraw the entire balance at any time (even to purchase a vacation home or sports car) without incurring the 10% penalty – even if he is under age 59½. Primarily because of these distinctions, the Court held that inherited IRAs are not "retirement funds," and are not exempt from the bankruptcy estate.

The rational of the Court does raise some questions. Is the Court suggesting that spousal rollovers might also be subject to creditor's claim? This is a prospect that would be truly disconcerting.

A spousal rollover has each of the foregoing infirmities – with the possible exception that the spouse can delay the timing of distributions under a spousal rollover more effectively than for a non-spouse beneficiary.

F. Deferral of Required Minimum Distributions

As discussed below, funds in tax deferred accounts cannot be maintained indefinitely but must be taken by what is referred to as the Required Beginning Date ("RBD"). However, the RBD from a retirement plan can be deferred until the employee participant retires, even if after age 70½. That ability to additionally defer beyond age 70 ½ is not available with respect to the Owner of an IRA

IV. REQUIRED MINIMUM DISTRIBUTIONS

A. The Too Early / Too Late / Too Little / Too Much Rules.

It is generally understood that an Owner cannot start taking IRA withdrawals before attaining age 59½ without incurring the 10% penalty for early withdrawal. These are is the Too Early/Too Much Rules. There are some exceptions for distributions prior to age 59½ that avoid the 10% penalty but they are of limited utility.[5] The Too Early/Much Rules are also triggered in certain distributions out of a converted Roth.

But what if the Owner does not want or need to take the funds in the account at age 59½? Unfortunately, the law does not allow him to maintain funds in a qualified plan or regular IRA account indefinitely. Thus, if the Owner does not start taking monies out of the account by the specified date, known as the Required Beginning Date – he runs afoul of the Too Late Rule. As such, beginning in the year in which the Owner of an IRA turns 70½ of age, he must begin withdrawing at least some portion of the account each year. The Owner could elect to defer the first year requirement until April 1 of the following year.

How much must be taken is governed by the Too Little Rule. The amount that must be withdrawn is known as the Required Minimum Distribution ("RMD").[6] The RMD compels the taxpayer to begin paying federal and state income taxes on the deferred income tax liability for the IRA, at least to the extent of the RMD at his or her highest rate brackets.[7]

Like many IRS concepts, the statutory language requiring the RMD is simply stated; but, in practice, the RMD rules promulgated to implement the statute are very complex.

The IRS first proposed regulations for the RMD in 1987. The proposed regulations were revised in 1997 to, among other things, recognize trusts as qualified designated beneficiaries. The regulations for Roth IRAs were finalized in 1999. *See* T.D. 8816 (2/3/1999). The proposed regulations were again revised in 2001 and Treasury issued final regulations in 2002. *See* T.D. 8987 (4/16/2002); Notice 2002-27.

Prior to 2003, a surviving spouse had "spousal rollover" benefits that allowed RMD to be calculated based on her life. But this benefit did not apply to non-spouse beneficiaries who were required to take the plan account over a 5-year period (the "5-Year Rule"). Effective January 1, 2003, the IRS changed its RMD rules, allowing a non-spouse beneficiary to take or "stretch-out" the taxable RMDs, but over a much longer period, using his or her own life expectancy rather than the shorter life expectancy of the IRA Owner.

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[5] There is no 10% excise tax if the Owner has unreimbursed medical expenses exceeding 10% of AGI (or 7.5% if both Owner and spouse were born before 1949); distributions do not exceed cost of medical insurance premiums, qualified educational expenses; Owner is totally and permanently disabled; distributions are in the form of an annuity; distributions do not exceed cost of purchase or repair of first home; or qualified reservist distribution. *See* IRS Publication 590 at 56-57. The exception for inherited IRAs is addressed separately in this Outline.

[6] To enforce compliance, IRC Section 4974 imposes a 50% excise tax in any year that actual distributions are less than the RMD.

[7] There is no RMD for Roth IRAs during the lifetime of the Roth IRA Owner.

B. Basic Rules for RMD.

1. *During the IRA Owner's Lifetime.*

The RMD, for any given year, is the value of the account at the end of the preceding year divided by a distribution period determined by using the IRS Uniform Lifetime Table for the Owner's age.[8]

Example: Owner turns 75 in 2014 and the value of his account is \$2 million. Under the Uniform Lifetime Table, the distribution period is 22.9. The RMD is thus \$2 million ÷ 22.9 = \$87,336.

2. *After the IRA Owner's Death*. What sums must be taken and when depends on whether the IRA's Owner died before or after the Required Beginning Date, *i.e*. age 70 ½ as well as who is deemed to be the beneficiary of the account.

a. Death of Owner before the Required Beginning Date.

i. No Designated Beneficiary. If there are no designed beneficiary, *i.e.* the account is payable to the Owner's estate, the account must be distributed within five years of the year following the date of death ("5-Year Rule"). Note that if there is no designated beneficiary, there is no requirement to distribute some or all of the account prior to the 5 year period; all that is required is that the account be distributed within the 5-Year Period.

ii. One Non-spouse Individual. If an individual other than the spouse is the designated beneficiary, the RMD is calculated based not on the Uniform Lifetime Table, but on the Single Life Expectancy Table. If the life expectancy of the beneficiary is 34.2, then that is the distribution period used as the denominator in calculating the RMD. The distributions must begin by December 31 of the year following the year of the Owner's death. If the distribution does not occur, then the 5-Year Rule will apply.

iii. Multiple Individual Beneficiaries. Unless care is taken in the beneficiary designation, if there are multiple beneficiaries who will share the account on a non-segregated, separate account basis, the IRS requires that the life of the most elderly of the designated beneficiaries be used in computing the RMD for all beneficiaries, irrespective of their ages.

Ex. Owner dies and has two children named as beneficiaries of a single account. The life expectancy of the oldest child must be used for both children in calculating their respective RMDs.

However, the IRS now allows the beneficiaries to divide the account after death and prior to December 31 of the year following the year of the

[8] If the IRA Owner designates his spouse as beneficiary, and the spouse is more than 10 years the Owner's junior, the RMD is based on joint life tables, resulting in a lower RMD than that computed using the Uniform Lifetime Table. A copy of the Uniform Lifetime Table, as well as the Single Life Expectancy Table, is attached to this Outline.

Owner's death. If that division occurs then the IRA will treat the account as 2 separate accounts and apply the Single Life Expectancy Table as to each child

iv. Trusts with Multiple Beneficiaries. Unless the Trust meets the See-Through Trust requirements, the Trust beneficiaries will be required to apply the Single Life Expectancy Table for the oldest individual beneficiary. And if the Trust also names a charity, the Trust will be subject to the 5-Year Rule as to that portion of the IRA allocated to it.

v. Spouse. If the Owner's spouse is the designated beneficiary, the spouse has several options not otherwise available to beneficiaries.

1. Spouse can remain a beneficiary. This option has the spouse compute the RMD using her life expectancy and using the Single Life Expectancy Table. This results in a more accelerated distribution of the account. This is particularly attractive is the spouse is under age 59 ½ since if the account is rolled over, she becomes the owner and could not take distributions prior to age 591/2 without incurring the 10% early withdrawal penalty.

2. Rollover. The spouse can either roll the funds over to an existing IRA account of the spouse or treat the account as the Owner's IRA as her IRA. In either case, the spouse must be the sole beneficiary of the IRA and have unlimited right to the account.

   As will be discussed herein below, the rollover may not be the best option, especially where the surviving spouse does not need the funds and stretch-out planning is desired.

b. Death after the Owner Reached the RBD.

1. No Designated Beneficiary. If there is no designated beneficiary, then the RMD is not the 5-Year Rule but distributions based on the Owner's life expectancy at the time of death.

   But here the beneficiary cannot use the Uniform Life Table but must use the Single Life Table which has the effect of accelerating the distributions.

2. Non-spouse Individual beneficiary. Distributions for any given year are calculated using the longer of the beneficiary's remaining life expectancy or the Owner's remaining life expectancy, again using the Single Life Expectancy Tables.

3. Multiple Beneficiaries. The same option as existed if death occurred prior to the RBD would apply.

4. Spouse Beneficiary. The same options as existed if death occurred prior to the RBD apply.

Thus, it comes as no surprise that the best outcome for stretch-out comes when one is able to use a trust coupled with provisions that treat the beneficiaries as qualified designated beneficiaries under the IRS rules.

V. USE OF A TRUST AS THE IRA BENEFICIARY

Initially, qualified benefits were taxable as capital gains and exempt from federal estate tax. That all changed with the 1982 Tax Act. Since then qualified plan benefits, including traditional IRAs, are what are known as IRC Section 691 Assets. As such, they are subject to both income tax and estate tax.

While the estate tax can't be easily deferred, the income tax liability can be deferred in its entirety at the Owner's death if the account is passed to a surviving spouse who could elect to roll them over to an IRA (*i.e.*, the spousal rollover). In contrast, trust beneficiaries were often stuck with the 5-Year Rule because a trust was not considered to be a qualified beneficiary. Thus, estate planners refrained from naming a trust as a beneficiary to qualified plan benefits or IRAs if there was a surviving spouse.

Over time, Congress relaxed the rules for when IRA or qualified plan benefits must be recognized by the beneficiary, including those where the beneficiary is a trust, first with the 5-Year Rule and most recently with the more flexible RMD rules. It is this relaxation that gives rise to the IRA Trust.

However, one has to remember that the IRS historically has made it difficult for a trust to be named as the beneficiary of an IRA even where stretch out planning was the goal.

While the IRS's Final Regulation issued in 2002 simplified lifetime distribution planning for <u>individual beneficiaries</u>, the Regulations further convoluted the issue for <u>trust beneficiaries</u> of an IRA.

Here is why:

Determining whether designated qualified beneficiaries exist and who are such qualified designated beneficiaries are issues that need to be resolved by September 30th of the year following the year of the Owner's death. Where the qualified designated beneficiary can be ascertained, distributions will be based on the beneficiary's life expectancy, using the Singe Life Table under Treas. Reg. §1.401(a)(9)-9.

However, as noted if a qualified designated beneficiary cannot be determined, then the distributions have to be taken out under the 5-Year Rule (if the Owner died before his Required Beginning Date) or over the remaining theoretical life expectancy of the Owner (if death occurred after his Required Beginning Date).

Where multiple individuals are named as beneficiaries and the benefits were divided into separate segregated accounts for each, the lifetime of the beneficiary could be used for each account, and the RMD applied to each share based on the life expectancy of each beneficiary.

Under the 2001 proposed regulations, where a trust was named as the beneficiary, it was permitted to divide the account into sub-trusts and apply the RMD rules as to each sub-trust where there were otherwise designated qualified beneficiaries of each sub-trust.

Effectively, the trust and sub-trusts were disregarded and viewed as See-Though entities with the individual trust beneficiary deemed to be the qualified designated beneficiary.

However, under the Final Regulations, this planning was no longer feasible. The Final Regulations stated that the separate account rule is "not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit."

Thus, a beneficiary designation that stated "The IRA will pass to my Family Trust to be divided into separate sub-trusts to be held for the benefit of each of my then living children" will not be entitled to separate share treatment.

Denial of the separate share treatment for trusts was confirmed by PLRs 200317041; 20037043, 200317044; 2004323027; 2006-08032. In each ruling, the IRS recognized that the trust could be divided into separate shares but that the RMD rules required that the trust base the RMD on the life expectancy of the oldest beneficiary named in the trust where the master trust was the named beneficiary of the IRA.

VI. THE SEE-THROUGH TRUST AND PLR 200537044

The IRS's reticence to allow separate sub-trusts to use the respective life expectancy of its beneficiary changed in 2005 with the See-Though Trust rules promulgated under the RMD Rules.

Just what is a See-Through Trust? It is a trust that has a qualified designated beneficiary; it has separate shares if there is more than one beneficiary named; and it provides for the distribution of the RMD out to the beneficiary.

A. PLR 200537044.

As noted, the IRS has repeatedly ruled that if a trust is named as the beneficiary of a qualified plan or IRA account, it will require the use of the life expectancy of the oldest of all beneficiaries of that trust when applying RMD rules.

However, the IRS did allow a strategy that allowed sub-trusts to be treated as individual accounts where the beneficiary designation makes reference to the individual sub-trusts as the beneficiary, rather than the master trust agreement.

On September 16, 2005, the IRS released PLR 200537044, which changed the IRS's view of naming a trust as beneficiary of IRA benefits. Most importantly, it stated that if a beneficiary designation names separate shares for each individual beneficiary of a trust (*i.e.*, each sub-trust has a defined and ascertainable share), then each trust beneficiary's life expectancy can be used for purpose of determining the RMD for that sub-trust.

Here are the facts of the PLR:

The Owner created an IRA trust during his lifetime. It provided that, upon his death, the IRA trust separated into nine separate sub-trusts under the master trust, with each sub-trust for one or more individual beneficiaries and each having different distribution provisions. What differentiated this situation from those of the prior rulings was that each sub-trust was expressly named as a beneficiary of the IRA as to a percentage thereof. The

IRS agreed that the separate sub-trusts created under the master trust were individual beneficiaries of the IRA and that the master trust was not the named beneficiary of the IRA.

Thus, by naming the individual sub-trusts as beneficiaries (and not the master trust), each sub-trust determines its See-Through Beneficiary separate from that of the other sub-trusts and, based on that analysis, determines the RMD for each sub-trust.

The ruling also allowed a one-time "toggle" between an Accumulation Trust and a Conduit Trust. In PLR 200537044, the trust provided that the trust protector was permitted to make an election to eliminate any contingent beneficiaries from an Accumulation Trust who could have otherwise jeopardized the designated beneficiary status of the IRA trust or the ability to use the maximum stretch-out. The trust protector was also given the power to convert an Accumulation Trust to a Conduit Trust. This was a useful provision if it determined that the beneficiary is indeed mature, able to handle distributions and no longer needs the protections of an Accumulation Trust.

B. <u>Qualified Designated Beneficiaries</u>. If there is an individual beneficiary named (or a trust that will be deemed a See-Through Trust), the identity of the Designated Qualified Beneficiary is made on December 31 of the calendar year following the year in which the Owner died. This delay allows disclaimers or other post death planning to insure that only those who would be treated as qualified designated beneficiaries are takers.

C. <u>See-Through Trusts Under RMD Rules</u>

RMD rules effectively impose a two-prong analysis to determine when a trust can qualify as a qualified designated beneficiary of an IRA account. The first is: Does the trust qualify as a See-Through Trust? The second is: Who is(are) the See-Through Trust Beneficiary(ies)?

1. <u>*Qualifying as a See-Through Trust*</u>. The Regulations require the trust to:

- Be valid under state law;
- Be irrevocable upon the death of the Owner;
- Have beneficiaries who are identifiable from the trust document;
- Provide documentation to the Plan Administrator or IRA custodian by September 1 of the year following the year of the death of the Owner.

2. <u>*Identifying the See-Through Trust Beneficiaries*</u>.[9] As noted, if the Owner dies prior to age 70½, assuming no spousal rollover, and if the IRA is designated to an individual, the measuring period for the post-death RMD is the beneficiary's single life expectancy.[10] If death

[9] Interestingly, the Regulations do not define the term "beneficiary" although reference is made in examples to the beneficiary "with respect to the interest in the employee benefit." Thus it would seem that a beneficiary of a trust or sub-trust whose interest is limited to non-IRA assets is disregarded in determining who is a See-Through Beneficiary.

[10] *See* Treas. Reg. §1.401(a)(9)-3, A3(b).

occurs after 70½, assuming no spousal rollover, the measuring life will be the greater of the beneficiary's single life expectancy or the Owner's remaining life expectancy.

When there are multiple beneficiaries designated in a way that does not create separate accounts that are recognized under the RMD regulations, then (i) if one of more of the beneficiaries is not a qualified designated beneficiary (*e.g.*, a charity), then the entire amount must be treated as if there were no qualified designated beneficiaries and thus subject to the 5-Year Rule; or (ii) if all the beneficiaries are qualified designated beneficiaries, then the post-death RMD for each beneficiary is determined with reference to the age of the oldest beneficiary.

Note that in determining the beneficiaries of each sub-trust, one is required under the Regulations to take into account all contingent or successor beneficiaries and use the single life expectancy of the oldest of all the beneficiaries who are in the pool– those entitled to current benefits as well as contingent beneficiaries.

The 2001 proposed regulations allowed a successor beneficiary to be excluded from the definition of qualified designated beneficiary if his or her interest arose only if another beneficiary died prior to receiving all funds to which that other beneficiary would have otherwise been entitled to receive under the trust instrument.[11]

The Final Regulations narrow this exclusion by providing that a successor beneficiary may not be excluded if he or she has any right (including a contingent right) to a plan interest "beyond being a mere potential successor" to the interest of another beneficiary upon such beneficiary's death.

There is confusion, however, as to what it means to be a "mere potential successor."

<u>Example</u>: I leave my IRA in three equal shares to each of my three children – Moe (age 33), Larry (age 30), and Curley (age 20) – in three separate sub-trusts that would qualify as See-Through Trusts. Each sub-trust shall distribute all income and such principal as the child might need as determined by the trustee until the child attains the age of 35. At 35, the trust interest is assigned outright to each child. If a child fails to attain 35 and has issue surviving, the child's interest passes to his issue. If the child dies leaving no issue, the trust interest passes to the trusts created for my other children then surviving; if a child is not then surviving, then to such child's issue. If there is no issue of any of my children then-surviving, then all to my heirs at law.

Clearly, Moe, Larry and Curley are qualified designated beneficiaries of their respective trusts. And their respective children would also be See-Through Beneficiaries under the Final Regulations (but not the proposed regulations) because the interest each might receive if his parent dies would continue in trust unless his parent had then attained age 35 and they had to attain age 35 to obtain distribution. In other words, there are two contingencies for a child's taking – survivorship of their parent and them attaining 35 years of age.

[11] *See* Treas. Reg. 1.409(a)(9)-5, A-7(c).

Inclusion of children in the pool of qualified designated beneficiaries will not shorten the stretch-out period since they obviously have longer life spans than their parents under the Single Life Expectancy Tables.

Are siblings See-Through Beneficiaries for the other sibling trusts? Yes, so long as no sibling has then attained age 35. If the child had so attained 35 then the only See-Through Beneficiary for that child's subtrust is that child.

What about Moe's children? Would they be See-Through Beneficiaries for Curley's or Larry's sub-trust?

Under the Final Regulations, they may be, but not necessarily so.

- If all the children are under age 35 at the time of the Owner's death and none has any issue then living at the Determination Date (*i.e.*, September 30th of the year following the year in which the Owner died), they are counted as within the pool of See-Through Beneficiaries.

- But if Curley is under age 35, and Moe and Larry are over 35, Moe's children and Larry's children are excluded because, under the instrument, Curley's interest would pass to Larry and Moe outright. The interest of their children would be dependent simply on "survivorship."

Again, including children within the pool of See-Through Beneficiaries is not likely to impede the hoped-for stretch-out.

But what about "heirs at law," who could include parents, grandparents, aunts and uncles – persons whose life expectancies are substantially shorter than that of either the children or grandchildren?

Here, the Final Regulations would suggest that unless a child was over the age of 35 at the time of the Owner's death, they are within the pool of See-Through Beneficiaries and thus such a provision could kill any chance of a meaningful stretch-out.

D. <u>Other Potential Pitfalls In Determining The See-Through Beneficiary</u>.

1. <u>*Payment of the Owner's Debts from Trust*</u>.

As noted earlier, an estate cannot be a qualified designated beneficiary. If the trust provides that before the division into sub-trusts, the Owner's general expenses and estate expenses can be paid from the trust income or corpus, will the IRS view such provision as tantamount to naming the estate as a See-Through Beneficiary in each sub-trust, thereby subjecting the distribution to the 5-Year Rule?

The short answer is that no one knows. But given the Treasury's hostility to stretch-out using trusts, one should not wave a red flag in front of the bull.

The easiest drafting solution is to preclude payment of general obligations or taxes. However, that could have real world negative impact on the trust and its beneficiaries. A better approach might be to have all such expenses properly chargeable against the IRA assets paid or set aside before the Determination Date (*i.e.*, September 1 of the year following the date of death of the Owner).

2. Powers of Appointment.

If the trust grants to a beneficiary a testamentary special power of appointment with respect to the IRA assets, are the permissible appointees also See-Through Beneficiaries?

The RMD rules are silent on the issue. The consensus of opinion seems to be that where the trust is an Accumulation Trust, the answer is yes, but if there is a Conduit Trust the, answer is no.[12] This analysis seems consistent with the RMD rules that a trust should not be allowed to exclude other than the primary beneficiary life expectancy when the assets can pass to other older beneficiaries.

Note that care must be made to ensure that charities or entities that are not deemed to have a life expectancy should not be possible takers under a power of appointment – lifetime or testamentary.

E. Conduit Trust versus Accumulation Trust.

There are several alternatives in drafting trusts that would qualify as See-Through Trusts under the RMD regulations.

1. *Conduit Trust.*

A Conduit Trust is, as its name implies, simply a pass-through device of the kind envisioned in PLR 200537004 (discussed in Section VI.D., *infra*). The trust provisions provide that, upon receipt of the annual RMD, it is disbursed immediately to the named beneficiary.

The Regulations specifically provide that when a trust requires all the RMD distributions to take place during the lifetime of the primary beneficiary, rather than be accumulated in the trust, the primary beneficiary is recognized as the sole See-Through Beneficiary.[13]

Since the primary beneficiary could well die prior to receiving all RMD, treating the primary beneficiary as the only See-Through Beneficiary seems at odds with the general rules that would not exclude contingent beneficiaries.

2. *Accumulation Trust.*

A non-Conduit Trust is, by definition, a trust that accumulates RMDs rather than mandating distributions. The trust grants to the trustee the right to either distribute or hold each RMD payment for either later distribution to the beneficiary (when certain stipulated conditions are met), or for such beneficiary's children and grandchildren. One could easily construct an Accumulation Trust as a Dynasty Trust.

Note that in an Accumulation Trust, the RMD is calculated based on the oldest life expectancy among those who are beneficiaries or contingent beneficiaries. But because

[12] See, *e.g.,* Sect. 6.3, Natalie Choate, *Life and Death Planning for Retirement Benefits*, 6th Ed., Ataxplan Publications (2006).

[13] Treas. Reg. §1.401(a)(9)-5,A-7(c)(3), Ex. 2.

no distribution is made, the RMD is paid by the trust at the applicable trust tax rate rather than at the individual beneficiary's tax rate.

As will be discussed below (Section VI.D., *infra*), because of the expansive inclusion of who is in the pool of See-Through Beneficiaries, there are a number of drafting techniques to limit those who would be included.

VII. PLANNING WITH THE IRA TRUST

A. The Compounding Effect of Limiting IRA Distributions.

As noted, the RMD regulations allow a beneficiary to recognize income from an inherited IRA over his lifetime. If one assumes that the fund will grow at more than 2.5% annually, deferring distributions while the fund continues to appreciate makes enormous sense, resulting in the likelihood that there will be substantial assets that would pass to an even younger generation than the Owner's children.

Let's look at a number of possibilities for the Owner who has the following assets:

IRA	$1,000,000
Liquid Assets	$1,000,000
Residence	$750,000

The Owner is 70 and planning to retire this year. He has one child, age 45, and one grandchild, age 20. He could do the following with respect to his IRA:

1. Take it all at the RBD, paying the income tax.
2. Take RMDs until he is on his death bed, and then takes it all (paying the income tax depletes his estate, and eliminates or reduces any estate tax liability).
3. Designate a Conduit Trust for his child as the beneficiary which would elect to "stretch-out" the payments under the RMD rules using his child's life expectancy.
4. Designate an Accumulation Trust for his child and issue, again assuming the stretch-out will be employed and preserve the bulk of the account balance from creditors.
5. Designate a Conduit Trust for his grandchild.
6. Designate an Accumulation Trust for his grandchild and his issue furthering the stretch-out and providing asset protection.
7. Convert the IRA to a Roth IRA, take no distributions and then name a Conduit or Accumulation Trust for the benefit of his child or grandchild as the beneficiary. (He has to pays the tax with his other liquid assets upon the conversion).

Under scenarios #1 and #2, the Owner foregoes all opportunity for compound growth for his heirs. This makes sense only if the Owner truly needs the entirety of the fund during his lifetime or upon death.

Under scenario #3, the RMD results in a 2½% distribution diminution (increasing over the next 20 years to approximately 4.5%). Thus, if the account obtains a return greater than what is paid out under RMDs, the fund will grow beyond date of death value. Toggle the Conduit Trust to an Accumulation Trust after the RMDs are paid can enhance the benefit for future generations.

Under scenario #5, the RMD will be substantially less than those required for the Owner's child. Thus, the stretch-out will reflect even greater appreciation and even better benefits if thereafter toggled to an Accumulation Trust for future generations.

Under scenarios #4 and #6, the growth will be even greater with an Accumulation Trust, notwithstanding the compression of the income tax rates for trusts. In fact, if the tax bracket of the child is at the marginal tax rate, the compression of rates becomes a less significant factor.

Scenario #7 actually generates the greatest appreciation in the account over the 20 year period where non-IRA assets can be used to pay the income tax liabilities and there are no RMDs during the Owner's lifetime.

B. Why Would an IRA Trust be Needed?

The Owner might be inclined to think that his children or grandchildren would readily recognize the benefits of stretching-out the IRA for as long as possible with the RMD. However, he would be foolish to make such an assumption.

While a beneficiary has the ability to stretch-out IRA distributions, he either may not necessarily want to do so voluntarily or be financially or tax astute enough to do so. An Owner should not assume that his intended IRA beneficiaries will make the right "stretch-out" decisions, or seek an advisor's help before taking withdrawals from the IRA account.

Recall that a beneficiary is not prohibited from withdrawing more than the RMDs and may instead decide to cash-out the IRA earlier than required to do so under the RMD rules, blowing any planned stretch-out. This may happen because the beneficiary:

- is not aware of the RMD rules and the available choice;
- does what he/she thinks (wrongly) is a tax-free rollover to his/her own IRA; or
- just can't wait to access the IRA money, or is influenced by a spouse or some other third-party to take and spend it.

Yanking the IRA money out too quickly will force the up-front payment of the income tax liability – which could otherwise be deferred – and dilute the ability to grow the funds or provide asset protection.

C. Even With Responsible Beneficiaries, the "IRA Trust" Still Makes Sense for Asset Protection.

Even if one assumes that the IRA beneficiary intends to do the RMD "stretch-out" and pay the taxes gradually over his or her lifetime, much can still go wrong when he receives the IRA directly as the named beneficiary.

- The assets may later be inherited by persons whom the Owner never envisioned (or wanted) to be recipients. The qualified designated beneficiary could name his or her spouse as next beneficiary, and that spouse's next husband or wife, or that spouse's children of another marriage, could inherit the account.

- The beneficiary, his or her spouse or children, may subsequently become spendthrifts or have creditor issues.

- A beneficiary's spouse may take some or all of the IRA in a divorce. Tax law allows the transfer of an IRA in a divorce tax-free, and thus the IRA account is an attractive target in a property settlement.

- A beneficiary who now or later in life receives needs-based government benefits (like Medicaid nursing care benefits or supplemental disability income) may not qualify for or may lose those benefits if he is the owner of an IRA account.

In other words, an inherited IRA not only needs to take advantage of "stretch-out" but needs asset protection too – the kind that a trust can provide.

D. <u>Planning Using the Conduit Trust</u>.

1. *<u>Advantages of a Conduit Trust</u>.*

a. The Conduit Trust is obviously the easiest to draft of all the possibilities to stretch-out the RMD over the beneficiary's lifetime and it is the one most easily to make compliant with the complex RMD regulations.

b. Multiple conduit sub-trusts will qualify for separate account treatment so long as each directs division of plan assets directly into separate accounts.

c. The trust can be drafted to authorize the trustee to make distributions to a custodian under the Uniform Transfer to Minors Act (where the beneficiary is a minor), as well as make distributions to a guardian "for the benefit of" the beneficiary.

d. The Conduit Trust can provide for a termination while the primary beneficiary is still living, *e.g.,* at a specified age. However, the primary beneficiary must be given complete control over the balance of the plan or IRA funds not yet distributed upon termination. In such an instance, the trustee must assign the balance of the IRA to the beneficiary at the termination date.

e. The Conduit Trust provisions could easily be incorporated into a standard revocable living trust rather than requiring a separate stand-alone trust. There is no need to draft a separate trust for the IRA benefits when the conduit is being used. But the trust does need to coordinate distributions of the RMD with other income distributions to be made to the beneficiary.

f. The conduit distributions are required only during the lifetime of the primary beneficiary. But if the trust does not address the issue of distributions after the beneficiary's death, the payments out to the beneficiary's estate during the life expectancy of the beneficiary will continue and the ability to convert the trust to an Accumulation Trust will be lost.

2. *Disadvantages of a Conduit Trust*.

a. It is a simple trust and thus all RMDs will be disbursed to the beneficiary, regardless of the amount of trust income and regardless of whether the beneficiary wants or needs the funds. Thus, this inhibits the stretch-out possibilities. This might not be so bad if the beneficiary is a minor, since the RMD payments will be small.

b. The amount disbursed to the beneficiary may actually be substantially less than the RMD because there is little trust income and trust expenses are substantial.

c. The problems associated with spendthrift, bankruptcy and special needs situations are not solved with Conduit Trusts.

3. *Drafting Considerations for Conduit Trusts*.

1. Trusts for children or – if such child fails to survive the Owner – such child's children, could be made part of a standard revocable living trust rather than a dedicated stand-alone trust. While incorporation of the retirement benefits sub-trust might be simpler, a stand-alone trust might provide better administrative ease for the plan custodian or fiduciaries dealing with multiple issues during the administration of the estate of the deceased Owner.

2. While one trust for retirement benefits and another for non-retirement benefits could be drafted, it is unlikely to be needed in the Conduit Trust situation. If separate trusts are done, care has to be taken to coordinate the IRA distributions with the distribution provisions for non-IRA assets.

3. Although a Conduit Trust requires the distribution of the IRA account balance to the beneficiary's estate upon the death of the beneficiary, there is nothing that precludes the account being transferred to a trust created by the beneficiary to continue for the benefit of the beneficiary's children and grandchildren.

E. Accumulation Trusts. The Accumulation Trust is used where there is a desire to withhold distributions from the qualified designated beneficiary.

As noted, a trust that mirrors the typical revocable living trust will substantially diminish or destroy the ability to stretch-out the IRA distributions because of the increased pool of See-Through Beneficiaries through contingent beneficiaries. There are a number of planning techniques that will ameliorate this problem when a Conduit Trust for IRA benefits will not work (*e.g.,* a special needs trust).

1. *Outright Distribution to Successor Beneficiaries*.

a. The "outright distribution to successor beneficiaries" provides that, upon the death of the primary beneficiary, the trust assets will pass outright to the next tier of beneficiaries, such as grandchildren. Thus, all future

RMDs after the death of the primary beneficiary will be assigned to the successor beneficiaries and the trust will terminate at the end of the life of the second-tier class.

b. This planning option takes advantage of the RMD rule limiting the pool of See-Through Beneficiaries and excludes a successor or contingent beneficiary if she or he has no right to the IRA account beyond being a mere potential successor upon another beneficiary's death. *See* Treas. Reg. §1.401(a)(9)-5,A-7(c). Thus, all contingent beneficiaries more remote than the second tier beneficiaries are excluded.[14]

c. While the second-tier successor beneficiaries are within the pool of See-Through Beneficiaries, in the vast majority of cases, they will have a life expectancy substantially less than that of the primary beneficiary.

d. This option might be suitable where there Owner is uninterested in further trust or asset protection for the second-tier beneficiaries.

e. This option would not be well suited if the successor beneficiaries are the very persons for whom asset protection is important, since termination of the trust also destroys the asset protection in the stretch-out.

f. If the second-tier beneficiaries include a special needs person, outright distribution to such a person could be catastrophic loss of Medicare benefits or other government assistance.[15]

2. *Age Restricted Beneficiaries*.

1. There are situations where neither a Conduit Trust nor outright gifts to second-tier beneficiaries is a good fit.

2. Under an age restriction alternative, the trust provides all of the normal powers of appointment and trusts for contingent and remainder beneficiaries, but excludes any potential beneficiary who would not be recognized as young enough under the RMD rules (*i.e.*, either an individual born in a year prior to the year of the primary beneficiary, or any entity that must use the 5-Year Rule, such as estate, charity or non See-Through Trust.)

3. This should produce a pool of See-Through Trust Beneficiaries that cannot have any member with a shorter life expectancy than that of the primary beneficiary.

[14] The Regulation suggests that if the trust provided that, at the death of the primary beneficiary, there were no second tier beneficiaries then living, the trust interest passes to the third tier beneficiaries, the third tier beneficiaries would nonetheless be excluded as See-Through Beneficiaries so long as all second tier beneficiaries were alive at the time of the death of the Owner.

[15] There are instances where the IRS has allowed a disabled IRA beneficiary's share to be transferred to a special needs trust without the recognition of income. *See* PLR 2006-2025. However, Medicare rules are draconian and applied separately.

4. But this alternative can produce some strange results and has tradeoffs. If there are multiple children, focusing on the life of the primary beneficiary would have the effect of excluding an older sibling who would often be the intended recipient if there were no surviving issue. The matter could be resolved by using, as the target date, the age of the oldest sibling. However, this has the effect of reducing the stretch-out by the difference in the number of years between the older sibling and the primary beneficiary.

5. Note that if the age limitation is to be applied only to the IRA assets for the stretch-out, then the provision has to be drafted in a way to not only stretch-out retirement assets but also any assets that have been distributed from the stretch-out account and accumulated in the trust.

3. *All to Last Individual Beneficiary Standing*.

A third alternative that limits the pool of See-Through Beneficiaries in an IRA Trust ensures stretch-out without the possible escheat of trust assets to the government.

a. Even with the two prior alternatives being used, it is still theoretically possible that there would be no takers under the trust instrument – especially if one avoids having a catastrophic default provision passing the assets to the "heirs" of the Owner.

b. Under this provision, the last identifiable person as a See-Through Beneficiary would be entitled to receive all the trust assets, including the assignment of any undistributed RMD.

d. It is similar to the gift to second-tier successor beneficiaries – but might be the third or fourth-tier beneficiaries.

e. The problem is that there is an even greater likelihood that the "Last One Standing" alternative will have assets pass to minors, as well as the loss of asset protection – unless the assets transfer to yet another trust.

f. If the Last Individual Beneficiary Standing is a disabled or special needs person, it could cause a catastrophic loss of government benefits.

g. An Owner with a large number of descendants may be more willing to tolerate these enumerated risks, believing that the possibility of the class of takers being reduced to one is highly unlikely.

F. Dynasty Trust.

1. *General*. While the term has many meanings, for purposes of this Outline, the reference to a "Dynasty Trust" refers to one that contains the following features:

- The child is the initial primary beneficiary;
- There is no set termination date other than that required by the Rule Against Perpetuity;

- Broad discretion is given to the trustee to make principal or income distributions, or refrain from doing so;
- Power of appointment provisions allowing the initial primary beneficiary to sprinkle provisions among the initial primary beneficiary and his children or/or their respective spouses;
- These same provisions are repeated generation after generation;
- Spendthrift provisions and a *situs* in a jurisdiction that is friendly to asset protection concepts;
- A provision for an independent trustee who is unrelated to the settlor and who has all the tax sensitive provisions;
- Provisions that attempt to navigate the technical rules to avoid estate and generation-skipping tax with exempt and non-exempt trusts (with exempt trust assets not subject to inclusion in the estate of the then primary beneficiary), and successor primary beneficiaries;
- Provisions to move assets into and out of the primary beneficiary's gross estate where it is not clear whether payment of estate tax is the best alternative versus generation-skipping tax exposure.

1. <u>*Drafting Considerations for the Dynasty Trust*</u>.

a. The biggest problem is how to draft the trust so that it will both (i) qualify under the RMD rules as having an identifiable qualified designated beneficiary (normally the primary beneficiary) for a See-Through Trust, and (ii) keep exempt property out of the estate of the beneficiaries.

b. It is not at all clear at the time of drafting the trust whether non-exempt retirement plan assets should be includable in the primary beneficiary's estate or have them subject to generation-skipping tax. The decision would depend on an analysis of the following:

i. Other assets of the primary beneficiary subject to transfer tax.

ii. The likelihood that non-exempt assets will pass to persons or trusts that are skip persons (and thus subject to GST).

iii. The potential advantage of a cost basis increase under Section 1014 for assets includable in the primary beneficiary's estate.

iv. The potential for Section 691(c) deductions for estate tax paid on retirement plan benefits included in the primary beneficiary's estate.

Given the increase in the lifetime exemption amounts under both estate and generation-skipping tax, there will be little reason to seek exclusion of non-exempt assets from inclusion in the primary beneficiary's estate.

c. Perhaps the easiest way to insure inclusion of non-exempt assets in the primary beneficiary's estate is to give the primary beneficiary a general testamentary power of appointment.

(i) Where the trust is a Conduit Trust, such a power is implicitly in a Conduit Trust because the primary beneficiary is the sole qualified designated See-Through Beneficiary under RMD rules.

(ii) But a typical general power of appointment could not be used in an Accumulation Trust since assets payable to an estate would subject the trust to the 5-Year Rule because an estate does not have an identifiable life expectancy. Therefore, the power would have to be a different kind of power that otherwise qualifies as a general power of appointment under IRC 2041 such as the "Delaware Trap" – which combines a special power with provisions that compel that it be exercised.

(iii) It is not at all clear that it is best to have non-exempt retirement benefits included in the primary beneficiary estate. It might be better to have them pass subject to the GST (which kicks in when assets pass to skip persons).

d. The existence of a testamentary limited power of appointment over exempt assets is irrelevant to achieving the desired tax results when there is an exempt Dynasty Trust. However, there may be other reasons for granting a testamentary limited power of appointment over exempt assets.

(i) This can be achieved by limiting the power of attorney to a special power of appointment over the Exempt Retirement Assets.

(ii) A Dynasty Trust can be qualified for the stretch-out of the RMD if one uses one of the techniques used in Accumulation Trusts (discussed in Section VII.F., *supra*).

VIII. THE IRA TRUST AND THE SURVIVING SPOUSE

So far this Outline has focused on situations for a stretch-out when there is no surviving spouse in the fact pattern. However, there are situations where the Owner might want the spouse to enjoy the benefits of the IRA during his or her lifetime. However, when his spouse dies, he wants any remainder to go to his heirs, not to in-laws – or worse, to ex-in-laws.

A. QTIP as a See-Through Trust.

Upon the Owner's death, the IRA Trust would provide for a QTIP sub-trust that would be a qualifying See Thorough Trust.

The QTIP trust would allow the surviving spouse to inherit the assets held in this trust, enjoy the income (and principal if the Owner so desired) and allow deferral of the estate tax on the assets of the marital trust until after the death of the surviving spouse, letting the later heirs pick up the liability for the estate tax and any unpaid income tax on remaining RMD payments.

In order for the marital trust to be a "Qualifying Designated Beneficiary" and therefore allow for stretching the withdrawals from the IRA over the surviving spouse's life expectancy, the trust must meet the tests enumerated in Section VI.A. at page 8, *infra*.

B. Potential Pitfalls.

There are some potential pitfalls with a QTIP trust as the designated beneficiary. First, a QTIP trust requires annual distribution of all trust income to the spouse-beneficiary of the trust. Thus, the QTIP trust must state that, with regard to any IRA, the income must be determined using the greater of (i) the required RMD, or (ii) the actual income of the assets of the IRA.

The following illustrates the problem:

> RMD is $5,000, but the IRA has accounting income of $10,000. In determining the income of the QTIP trust, the $10,000 must be used and distributed to the surviving spouse. If the RMD is $5,000 but the actual income of the IRA assets is only $3,000, then the $5,000 must be distributed. Then, after determining the income amount to use for the IRA, if there are other assets in the marital trust, the income of those assets must be determined as well and added to the greater of the amounts described above, and that total must be distributed to the surviving spouse. If these provisions are not included in the QTIP trust, then the marital bequest of the IRA will fail.

Another problem occurs if there are stated remainder beneficiaries of the marital trust. As noted previously, if the assets pass to individuals or successor tiers of beneficiaries, the ability to stretch out the RMD can be severely compromised, especially if a potential See-Through Beneficiary is an estate or charity and the successor beneficiary(ies) will be required to withdraw the IRA under the 5-Year Rule.[16]

Even if the beneficiary designation is of the respective sub-trusts for identifiable persons and not the master trust (as required by LTR 200537044), then the stretch-out will be based on the life expectancies of each respective child as to his or her share of the remaining IRA account balance – provided that there are no contingent or remainder beneficiaries who could defeat the planned stretch-out.

IX. CONCLUSION

The benefits of an IRA trust, even a Conduit Trust, can be summarized as providing a guaranteed long-term deferral of the distribution of the IRA and the payment of income tax liability as well as being a vehicle for providing asset protection. Obviously, the longer one defers the distribution of plan assets and the distribution of non-IRA assets, the greater the

[16] As noted in Section VI.A.2. *supra*, even if there are identifiable beneficiaries, one still has to evaluate all contingent beneficiaries of each future sub-trust to determine the pool of See-Through Beneficiaries.

compounding effect and the greater the value of the assets when the IRA trust finally terminates.

UNIFORM LIFETIME TABLE

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

SINGLE LIFE TABLE

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