BASIC TAX and PLANNED GIVING

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MAXIMIZING DONOR TAX SAVINGS FROM CHARITABLE GIFTS

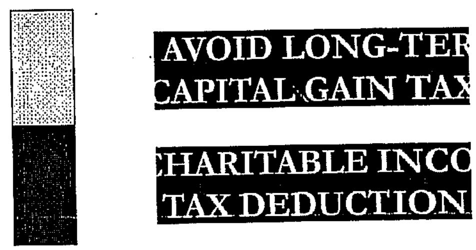
1. LIFETIME GIFTS
   -- Appreciated property – IRAs if over age 70 ½
2. TAX DEDUCTIONS LOST – PAPERWORK
   – Missing CWA -- Appraisal not "qualified" appraisal
3. LEGACY GIFTS
   – Pre-tax dollars in retirement accounts offer the biggest potential

#1 – MAKE GIFTS OF APPRECIATED STOCK

DOUBLE-TAX ADVANTAGE

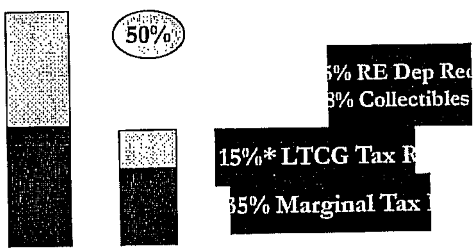
- Charitable Income Tax Deduction for the Full Appreciated Value of the Stock
- Never Pay Income Tax on the Growth of the Value of the Stock
- Loss Property? Sell for tax loss; give cash

DOUBLE BENEFIT FROM GIFT OF APPRECIATED L.T.C.G. PROPERTY



$ Benefits Max Federal Taxes Saved

Person in 2012



IMPACT OF INDIVIDUAL INCOME TAX RATE CHANGES IN 2012 AND 2013-15

FUTURE INCOME TAX RATES

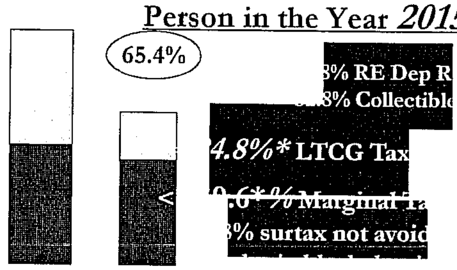
Highest tax rates	2012	2013-15
▪ Investment income	35%	44.4%
▪ LT Capital Gains	15%	24.8%

INCOME TAX RATES

Income Level	INVEST -MENT	WAGES *(+1.45%)*	LTCG & Divid
▪ AGI < $200k/$250k	28%	29.4%	15%
▪ **Taxb>$400/$450**	**39.6%**	**41.0%**	**20%**
plus 3% phase-out	**1%**	**1 %**	**1%**
plus health care surtax	**3.8%**	**0.9%**	**3.8%**
With $12,000+ income,	44.4%	42.9%	24.8%
Trusts & Estates >>	43.4%		23.8%

$ Benefits Max Federal Taxes Saved

Person in the Year *2015*



Reduce Net Investment Income

Shift investment income to charity:

#1 – Make gifts of appreciated stock

#2 - Donor advised funds

& private foundations

DONOR ADVISED FUNDS

Administrative Convenience

– split large gift to many charities

-- anonymous gifts possible with DAFs

-- one receipt from DAF/PF instead of many CWAs from many charities

AMOUNT OF TAX DEDUCTION FOR PUBLICLY TRADED STOCK

Average of high-low for the day

XYZ Stock given to charity at 12:30 pm

- $ 98 – price of stock at 12:30 pm
- $ 90 – lowest price of stock that day
- $100 - highest price of stock that day
- $ 93 – price when stock market closed

Charitable income tax deduction?

$95 – average of high-low for the day

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

- Real Estate ?
- Artwork ? Jewelry? Historic battle flag? ("Tangible personal property")
- Inventory ?
- Auto ? Boat? Airplane?

Gifts of Illiquid Assets

- Rule #1
  – Beware of Gifts That Eat
- Rule #2
  – Don't forget Rule #1

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

Real Estate ?

- Yes, same tax savings to donor as if gave appreciated stock
- *But*: if donate to private non-operating foundation? Can only deduct cost.
- Appraisal needed. Admin costs higher.

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

Artwork ? Historic artifact?
("Tangible personal property") LTCG

- Donor can deduct higher value if charity physically uses it for exempt purpose . Usually education: museum or university that displays it.
- Appraisal needed. Charity signs IRS Form 8283

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

Artwork ? Historic artifact?
("Tangible personal property") LTCG

- Donor can deduct higher value if charity physically uses it for exempt purpose . Usually education: museum or university that displays it.
- Appraisal needed. Charity signs IRS Form 8283
- **Charity not use? Sells property?**
  Then donor deducts lower cost rather than higher market value of the donated TPP

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

Does the charity have liability when it signs IRS Form 8283?

- **signature acknowledges receipt**
  Not a guarantee of value donor claimed
- **"related use" only matters for TPP**
  For gift of RE, stock, inventory, etc. – OK to say "unrelated use" – donor's tax deduction unaffected

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

Inventory? Life insurance policy ?

Car dealer donates $15k car for fund-raising auction. Cost to dealer: $10k

- Appraisal needed (if value over $5,000)
- Donor can only deduct cost; not value
- Charitable income tax deduction reduced by "**ordinary income if sold**"

#2 – WHAT ABOUT OTHER TYPES OF APPRECIATED PROPERTY ?

Auto ? Boat? Airplane?

- No appraisal needed. Instead, donor deducts whatever price charity sold it for (usually wholesale).
- Charity files Form 1098-C – donor SSN
- Special rules if charity uses donated car, boat, or plane ("Meals on Wheels")

MAXIMIZING DONOR TAX SAVINGS FROM CHARITABLE GIFTS

LIFETIME GIFTS - Bottom line:

- **Best asset to donate is usually appreciated publicly traded stock**
- **Appreciate real estate & TPP (if used by the charity) can have same tax advantage to donor, but there can be higher costs (appraisals, etc)**

MAXIMIZING DONOR TAX SAVINGS FROM CHARITABLE GIFTS

Charitable IRA Rollover

WHAT SHOULD DONORS DO IN A YEAR LIKE 2015 WHEN THE LAW HASN'T BEEN EXTENDED?

Charitable IRA Rollover
-- Lifetime Gifts from IRAs --

-- OVERVIEW OF THE LAW --

- IRA owner must be over age 70 ½
- Maximum: $100,000 per year
- Yes! Charitable gift satisfies required minimum distribution requirement from IRA!

WHO WINS?

- Donors who do not itemize tax deductions ("standard deduction")
- Donors who live in states where state income tax laws have no charitable deduction

WHO WINS ?

- Donors who lose tax breaks as their income increases

- social security benefits taxable
- medical expenses (7.5% of AGI)
- Medicare "B" premiums
- **3.8% surtax invstmnt income**(AGI>$200k)
- lose 3% of itemized dedns (AGI > $250k)

Taxpayers with AGI Near $200,000 and with lots of Net Investment Income

<u>**"Charitable IRA Rollover"**</u> - over age 70 ½

71 year old professional

- $150,000 compensation income
- $50,000 net investment income
- This year: first RMD from IRA: $40,000
- Intends to make charitable gift: $30,000

Taxpayers with AGI Near $200,000

<u>**"Charitable IRA Rollover"**</u> - over age 70 ½

	Normal Gift	
Compensation	$150,000	
Investment	***50,000***	
IRA RMD	40,000	
AGI	**$240,000**	<< *3.8% surtax*
Taxable Income	$210,000	***on $40,000***

Taxpayers with AGI Near $200,000

<u>**"Charitable IRA Rollover"**</u> - over age 70 ½

	Normal Gift	**IRA Gift**
Compensation	$150,000	$150,000
Investment	50,000	50,000
IRA RMD	40,000	**10,000**
AGI	$240,000	$210,000
3.8% surtax on:	**$40,000**	**$10,000**

LEGAL REQUIREMENTS

- Over age 70 ½
- IRA (only) – <u>not</u> 403(b), 401(k), etc.
- "Directly" from the IRA to charity
  - -- OK to send check to donor who forwards to charity

LEGAL REQUIREMENTS

- ELIGIBLE CHARITY – Public charity or private operating foundation
  - -- however, a donor advised fund or supporting org is <u>not</u> eligible
- Must qualify for full charitable deduction – no dinners; no CGAs

LEGAL REQUIREMENTS

- Taxable part of IRA distributions (only)
  -- tax-free distributions protected
- Donor must have letter from charity that donor received no goods or services in exchange for the gift

TECHNICAL ISSUES

- Yes! Charitable IRA gifts can satisfy legally binding pledges!
- Joint return? Up to $200,000
- No withholding taxes
- Beneficiary of an inherited IRA <u>who is over age 70 ½</u> can make charitable gifts of required distributions

Will Law Be Extended to 2015?

>Planning strategy for 2015

if, as in 2008, 2010, 2012 and 2014, the law has not been extended until December!:

>Give RMD to charity;

> can't lose ! (Some IRAs balk)

MAXIMIZING DONOR TAX SAVINGS FROM CHARITABLE GIFTS

2. TAX DEDUCTIONS LOST – PAPERWORK

Tax Court: "Yes, we agree that you made a charitable gift !

But, no ! We will <u>not</u> let you take a charitable income tax deduction !"

-- Missing CWA -- Appraisal not "qualified"

TAX DEDUCTIONS LOST – PAPERWORK

** Gifts <$250 – receipt/ cancelled check*

** Gifts ≥ $250 – C.W.A. needed*

Contemporaneous Written Acknowledgement

** Property Gifts > $5,000*

– "Qualified Appraisal" by a "Qualified Appraiser"

-- Exceptions: publicly traded stock, etc

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TAX DEDUCTIONS LOST –
Gifts <$250 – receipt/ cancelled check

- Taxpayer must prove gift with a cancelled check, credit card statement, or a receipt from the charity
- Cash gift in the church plate?

-- no tax deduction for undocumented gift

– yes deduction if cash in named envelope, and receive statement from church

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

Contemporaneous Written Acknowledgement

Required for every gift of $250 or more

- Charity states amount of cash or, if property, a description (but not value) of donated property
- States whether donor received goods or services (and if so, the value that the donor received) [token benefits (coffee mugs, etc) can be ignored]
- Donor must receive CWA before filing tax return

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

Penalties if invalid CWA ?

Example: Forgot to say "you received no goods or services"?

- None on the charity
- Donor loses income tax deduction
- Harsh outcome: Donor is penalized for a mistake made by the charity

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

Penalties if invalid CWA:

- None on the charity
- Donor loses income tax deduction
- Harsh outcome: Donor is penalized for a mistake made by the charity

- **Tip for donors who give to many charities: Use a donor advised fund. Need only one receipt**

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

" I donated $400 of used clothing and household items to a charity. They just gave me a signed blank receipt with the date on it. I filled in all the information. Can I deduct my gift of $400?"

Tax Court: "NO. To be a CWA, the charity must describe the property donated."

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

" I donated $400 of used clothing and household items to a charity. They just gave me a signed blank receipt with the date on it. I filled in all the information. Can I deduct my gift of $400?"

Tax Court: "NO. To be a CWA, the charity must describe the property donated."

SOLUTION: Keep each gift to these types of charities under $250

TIP: Take digital photo of property

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

" I know that people who volunteer services cannot deduct the value of their services. But they can take a charitable income tax deduction for out-of-pocket expenses, like travel. One of our directors flew to our charity's national conference at her own expense."

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

" I know that people who volunteer services cannot deduct the value of their services, but they can take a charitable income tax deduction for out-of-pocket expenses, like travel. One of our directors went to our national conference at her own expense."

Question: Does she need a CWA to be able to deduct her out-of-pocket expenses?

Answer: Yes! The charity does not have to state the amount of the expenses in the CWA, but must state "no goods or services" and must generally describe the event.

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

" One of our donors is under an IRS audit for last year's tax return. Our charity forgot to add 'you received no goods or services' to our thank you letter. The donor received nothing from us. Can we give the IRS a corrected CWA today and thereby correct the mistake?"

IRS & Tax Court: NO!

--New CWA is not "contemporaneous"

TAX DEDUCTIONS LOST –
Gifts ≥ $250 – CWA needed

Penalties if invalid CWA:

- None on the charity
- Donor loses income tax deduction
- Harsh outcome: Donor is penalized for a mistake made by the charity
- **>>Tip for donors who give to many charities: Use a donor advised fund. Need only one receipt**

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

A charitable gift of property valued at more than $5,000 must be valued with a "qualified appraisal" that was prepared by a "qualified appraiser".

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

- WHAT?
- WHEN?
- BY WHOM?
- PAPERWORK

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

WHAT ? A charitable gift of property valued at more than $5,000.

Exceptions

- Publicly-traded stock
- Closely-held stock? There is a $10,000 threshold rather than $5,000

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

WHEN ?

The appraisal must be performed

- no more than 60 days before the gift and
- no later than the due date for filing the donor's income tax return (including extensions)

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

BY WHOM? A "qualified appraiser"

- Someone who publicly holds self out as an appraiser and who is qualified to appraise the particular property.
- Not qualified: competent person who isn't an appraiser (e.g., real estate broker; a life insurance co tells value of a policy).

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

BY WHOM? A "qualified appraiser"

- Not qualified: The donor or the charity, as well as employees and related parties to the donor and charity. They are prohibited from acting as appraisers even if they would otherwise be qualified.

TAX DEDUCTIONS LOST –
Gifts >$5,000 – Qualified Appraisal

PAPERWORK

- Donor attaches "appraisal summary" to income tax return
  – over $500,000? Attach entire appraisal to tax return
- Form 8283 – signed by donor, appraiser, and the charity

TAX DEDUCTIONS LOST –
PAPERWORK

**** Gifts <$250 – receipt/ cancelled check***

**** Gifts ≥ $250 – C.W.A. needed***

Contemporaneous Written Acknowledgement

**** Property Gifts > $5,000***

– "Qualified Appraisal" by a "Qualified Appraiser"

-- Exceptions: publicly traded stock, etc

PLANNING FOR RETIREMENT ASSETS

MAXIMIZING DONOR TAX SAVINGS FROM CHARITABLE GIFTS

3. LEGACY GIFTS

-- Pre-tax dollars in retirement accounts offer the biggest potential

RETIREMENT PLAN DISTRIBUTIONS

* *Required Lifetime Distributions*

* *Bequests of Retirement Assets*

-- spouse -- trusts -- charities

THREE STAGES OF A RETIREMENT ACCOUNT

- Accumulate Wealth
- Retirement Withdrawals
- Distributions After Death

Accumulate Wealth

- Tax deduction at contribution
- Accumulate in tax-exempt trust
- Taxed upon distribution

= *Tax Deferred Compensation*

Objective of Tax Laws: Provide Retirement Income

Consequently, there are laws to:

- **Discourage** distributions before age 59 ½
- **Force** distributions after age 70 ½

TYPES OF QRPs

- 1. Sec. 401 – Company plans
- 2. Sec. 408 – IRAs
  -- SEP & SIMPLE IRAs
- 3. Sec. 403(b) & 457–Charities
- 4. Roth IRAs & 401(k)/403(b)

RETIREMENT ACCOUNTS

ESTATE PLANNER'S DILEMMA:

- **<u>Cannot</u>* make a lifetime gift of retirement assets, like stock or land**
  *** exception: "Charitable IRA"**
- **<u>Cannot</u> put into FLP for discount**
- **<u>Can</u> make a bequest of retirement assets, but usually taxable income to recipient**

Roth IRA, Roth 401(k), or Roth 403(b)

INVERSE OF TRADITIONAL:

- <u>No</u> tax deduction at contribution
- Accumulate in tax-exempt trust
- <u>Not</u> taxed upon distribution

THREE STAGES

- **Accumulate Wealth**
- **Retirement Withdrawals**
- **Distributions After Death**

RETIREMENT

TAXATION

General Rule – Ordinary income

Exceptions:

-- Tax-free return of capital

-- NUA for appreciated employer stock

-- Roth distributions are tax-free

USUAL OBJECTIVE:

Defer paying income taxes in order to get greater cash flow

	Principal	10% Yield
Pre-Tax Amount	$ 100,000	$ 10,000
Income Tax on Distribution (40%)	40,000	
Amount Left to Invest	$ 60,000	$ 6,000

REQUIRED MINIMUM DISTRIBUTION ("RMD")

BACKGROUND: 50% penalty if not receive distribution from IRA, 401(k), etc:

#1 – lifetime distributions from own IRA:

→beginning after age 70 ½

#2 – an inherited IRA, 401(k), etc –

→ beginning year after death *

REQUIRED MINIMUM DISTRIBUTIONS *LIFETIME DISTRIBUTIONS*

Age of Account Owner	Required Payout
70 1/2	3.65%
75	4.37%
80	5.35%
85	6.76%
90	8.75%
95	11.63%
100	15.88%

ADVANTAGES OF ROTH IRAs

- Unlike a regular IRA, no mandatory lifetime distributions from a Roth IRA after age 70 ½
- Yes, there are mandatory distributions after death

THREE STAGES

- **Accumulate Wealth**
- **Retirement Withdrawals**
- **Distributions After Death**

Distributions After Death

- **Income taxation**
- **Mandatory ERISA distributions**
- **Estate taxation**
- **Asset Protection** *(Clark v. Ramaker)*

Collision of four legal worlds at death

INCOME IN RESPECT OF A DECEDENT - "IRD" – Sec. 691

- No stepped up basis for retirement assets
- After death, payments are ***income in respect of a decedent*** ("IRD") to the beneficiaries
- Common mistake in the past: children liquidate inherited retirement accounts.

Distributions After Death

> *Income taxation*

> Mandatory ERISA distributions

> *Estate taxation*

Collision of three tax worlds at death

Distributions After Death

After death, must start liquidating account

- Tax planning for family members who inherit: *DEFER* distributions as long as possible – greater tax savings
- "Stretch IRA" – make payments over beneficiary's life expectancy

Distributions After Death

"life expectancy"

Oversimplified: Half of population will die before that age, and half will die after

Implication: For the 50% of people who live beyond L.E. date, an inherited IRA will be empty before they die.

REQUIRED MINIMUM DISTRIBUTIONS *LIFE EXPECTANCY TABLE*

Age of Beneficiary	Life Expectancy	
30	83	53.3 more years
40	83	43.6
50	84	34.2
60	85	25.2
70	87	17.0
80	90	10.2
90	97	6.9

REQUIRED MIN. DISTRIBUTIONS *LIFE EXPECTANCY TABLE* "STRETCH IRAS"

Age of Beneficiary	Life Expectancy	
30	*1.9%*	53.3 more years
40	*2.3%*	43.6
50	*2.9%*	34.2
60	*4.0%*	25.2
70	*5.9%*	17.0
80	*10.0%*	10.2
90	*14.5%*	6.9

REQUIRED MINIMUM DISTRIBUTIONS * *DEFINITIONS* *

- **Required Beginning Date ("RBD")**
  April 1 in year after attain age 70 ½
- **Designated Beneficiary ("DB")**
  A human being. An estate or charity can be a beneficiary of an account, **but not a DB.**
- **Determination Date**
  September 30 in **year <u>after</u> death.**

HOW TO ELIMINATE BENEFICIARIES BEFORE DETERMINATION DATE

- Disclaimers
- Full distribution of share
- Divide into separate accounts

SENATE PROPOSAL: LIQUIDATE ALL INHERITED IRAs IN FIVE YEARS

- 2012 – Highway Bill – not enacted
- President Obama budget proposal
- June, 2014 – Sen. Wyden adds to Highway Bill

EXCEPTIONS

- – Spouse – minor child – disabled
- – Person not more than ten years younger

REQUIRED MINIMUM DISTRIBUTIONS
Example: Death at age 80?
CURRENT LAW: *Life Expectancy Table*

Age of Beneficiary		Life Expectancy
30	*1.9%*	53.3 more years
40	*2.3%*	43.6
50	*2.9%*	34.2
60	*4.0%*	25.2
70	*5.9%*	17.0
80	*10.0%*	10.2
90	*10.0%*	6.9 * [10.2 yrs]

REQUIRED MINIMUM DISTRIBUTIONS
Example: Death at age 80?
PROPOSED: FIVE YEARS if >10 yrs younger

Age of Beneficiary		Life Expectancy
30		5 years
40		5
50		5
60		5
70	*5.9%*	17.0
80	*10.0%*	10.2
90	*10.00%*	6.9 * [10.2 yrs]

SENATE PROPOSAL: LIQUIDATE ALL INHERITED IRAs IN FIVE YEARS

EXCEPTIONS

- – <u>Spouse</u> – minor child – disabled
- – Person not more than ten years younger

TAX TRAP: Does naming a <u>trust for a spouse</u> (e.g., QTIP trust; credit shelter trust) as an IRA beneficiary mean required liquidation in 5 years?

SENATE PROPOSAL: LIQUIDATE ALL INHERITED IRAs IN FIVE YEARS

IMPLICATIONS FOR CHARITIES

Donors more likely to consider

- Outright bequests
- Retirement assets to tax-exempt CRT
  - Child: income more than 5 years; then charity
  - Spouse only (marital estate tax deduction)
  - Spouse & children (no marital deduction)

SENATE PROPOSAL: LIQUIDATE ALL INHERITED IRAs IN FIVE YEARS

IMPLICATIONS FOR CHARITIES

- Retirement assets for a CGA?
  - Lifetime? A *disaster*. PLR 20056024
  - Bequest? PLR 200230018

-- "No taxable income to the estate"

-- Income to beneficiary? [Not addressed]

FUNDING TRUSTS WITH RETIREMENT ASSETS

FUNDING TRUSTS

General Rule: Trust is not DB

Exception: "Look-through" trust if four conditions

Types:-- ***"accumulation trusts"***

-- "***conduit trusts***"

FUNDING TRUSTS

There should be a real need for a trust

-- a retirement account <u>is</u> in a trust

-- rules simpler if people are beneficiaries

MULTIPLE BENEFICIARIES OF A SINGLE IRA?

- **Must liquidate over life expectancy of oldest beneficiary**
- **<u>Payable to a trust</u>? Use life expectancy of oldest trust beneficiary**

FUNDING TRUSTS WITH RETIREMENT ASSETS

Challenges when there are multiple beneficiaries with a big age spread (Mom and children)

Common problem with marital bypass trusts and <u>QTIP trusts</u> when surviving spouse is elderly and other beneficiaries are young

FUNDING TRUSTS WITH RETIREMENT ASSETS

Surviving spouse has an option that no other beneficiary has:

a ***rollover*** of deceased spouse's retirement assets to her or his own new IRA (creditor protection, too!)

Other beneficiaries only option:
an inherited IRA

AGE AT DEATH

MEDIAN AGE AT DEATH ON FEDERAL ESTATE TAX RETURNS:

Age 80 – Men

Age 84 - Women

REQUIRED MINIMUM DISTRIBUTIONS *LIFE EXPECTANCY TABLE*

Age of Beneficiary	Life Expectancy
30	53.3 more years
40	43.6
50	34.2
60	25.2
70	17.0
80	**10.2 more years**
90	**6.9 more years**

USUAL OBJECTIVE:

Defer paying income taxes in order to get greater cash flow

		Principal	10% Yield
▪ Pre-Tax Amount	$	100,000	$ 10,000
▪ Income Tax on Distribution (40%)		40,000	
▪ Amount Left to Invest	$	60,000	$ 6,000

MANDATORY DISTRIBUTIONS

[Assume inherit IRA at age 80 and die at 92]

AGE	Own IRA	Accumulation Trust	Conduit Trust .
80	5.35%	9.80%	9.80%
85	6.76%	19.23%	13.16%
90	8.78%	100.00%	18.18%
91	9.26%	empty	19.23%
92	9.81%	empty	20.41%

WOULD THE OUTCOME OF ROLLOVER vs. TRUST BE ANY BETTER WITH A YOUNGER SURVIVING SPOUSE?

ANSWER: NO

MANDATORY DISTRIBUTIONS
[Assume surv. spouse inherits IRA at age 70]

AGE	Own IRA	Accumulation Trust	AGE	Own IRA	Accumul Trust
70	3.65%	5.88%	82	5.85%	20.00%
			83	6.14%	25.00%
75	4.37%	8.33%	84	6.46%	33.33%
80	5.35%	14.29%	85	6.76%	50.00%
			86	7.10%	100.00%
			87	7.47%	empty

MANDATORY DISTRIBUTIONS
[Assume surv. spouse inherits IRA at age 70]

AGE	Own IRA	*Conduit Trust*	AGE	Own IRA	*Conduit Trust*
70	3.65%	5.88%	82	5.85%	11.00%
			83	6.14%	11.63%
75	4.37%	7.46%	84	6.46%	12.35%
80	5.35%	9.80%	85	6.76%	13.16%
			86	7.10%	14.08%
			87	7.47%	14.93%

IRS PLRs: Surviving Spouse *Rollover*

Ten IRS Private Letter Rulings -2015 &2014

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

* A TRUST FOR THE SPOUSE
* THE ESTATE, WITH ESTATE POUR-OVER INTO A TRUST FOR THE SPOUSE
* THE ESTATE, WHERE THE SPOUSE IS THE SOLE OR RESIDUARY BENEFICIARY OF ESTATE

IRS PLRs: Surviving Spouse *Rollover*

IS A PLR NECESSARY?

- IRS increased PLR user fee from $19,000 to $28,300 – Feb 1, 2015
- ACTEC: "public needs a Revenue Ruling"
- Some trustees willing to do rollover without a PLR, if facts fit the PLRs

IRAs in SECOND MARRIAGES

SURVIVING SPOUSE ROLLOVER?

- The surviving spouse sets up a new IRA in her/his own name
- Then the surviving spouse selects the beneficiaries upon death
- What assurance that a child from the deceased spouse's prior marriage will be named as a beneficiary?

2-GENERATION CHARITABLE REMAINDER TRUST

- Typically pays 5% to elderly surviving spouse for life, then 5% to children for life, then liquidates to charity
- Like an IRA, a CRT is exempt from income tax
- Can operate like ***a credit-shelter trust for IRD assets*** *[no marital deduction]*

2-GENERATION CHARITABLE REMAINDER TRUST

- Can be a solution for ***second marriages*** when estate is top-heavy with retirement assets. Example:

-- Half of IRA to surviving spouse

-- Other half of IRA to a CRT for 2nd spouse and children from 1st marriage

2-GENERATION CHARITABLE REMAINDER TRUST

TECHNICAL REQUIREMENTS

- Minimum 10% charitable deduction
  -- all children should be over age 30
- CRUT – minimum 5% annual distrib
- Not eligible for marital deduction
- Charitable intent !

MANDATORY DISTRIBUTIONS

[Assume inherit IRA at age 80 and die at 92]

AGE	Own IRA	Accumulation Trust	Conduit Trust	CRT
80	5.35%	9.80%	9.80%	5.00%
85	6.76%	19.23%	13.16%	5.00%
90	8.78%	100.00%	18.18%	5.00%
91	9.26%	empty	19.23%	5.00%
92	9.81%	empty	20.41%	5.00%

RETIREMENT ASSETS IN THE CROSSFIRE OF:

> Income taxation

> Mandatory ERISA distributions

> ***Estate taxation***

Collision of three tax worlds at death

FUTURE OF ESTATE TAX ?

Year	Threshold	
2001	$ 675,000	
2002-2003	$ 1,000,000	
2004-2005	$ 1,500,000	
2006-2008	$ 2,000,000	
2009	$ 3,500,000	
2010	REPEALED !	[* *carryover basis*]
2011-2014	$ 5,000,000	*inflation indexed*
2015	$ 5,430,000	*inflation indexed*

Federal Estate Tax Returns Filed

2013 [1k<$5Mportab]	**10,600**	24% charit
2007	38,000	20%
2004	62,700	18%
2001	**108,000**	17%
1998	97,900	17%
1995	69,780	19%
1992	**59,200**	19%

OTHER TRANSFER TAX RULES

- Gift Tax -$5+ million inflation indexed
- GST - $5+ million inflation indexed
- 40% estate & gift tax rate
- Portability for married couples permanent

MARRIED?

61% of male decedents

24% of female decedents

- MARITAL DEDUCTION !!
- DEFER ESTATE TAX UNTIL DEATH OF SURVIVING SPOUSE

RETIREMENT ACCOUNTS AND PORTABILITY

For a surviving spouse, rollovers and portability will usually be your first choice

NOT MARRIED?

39% of male decedents

75% of female decedents

- NO MARITAL DEDUCTION
- ESTATE TAX WILL BE DUE ON I.R.D.

NOT MARRIED?
NO MARITAL DEDUCTION

WHAT IS THE TAX RATE THAT RICH PEOPLE PAY ON THEIR INCOME ?

- Income tax?
- Estate tax?

IF RICH ENOUGH TO PAY ESTATE TAX, CONSIDER CHARITY & PHILANTHROPY.

Combination of income & estate taxes

Income	$100
Income tax	40 (40%)
Net	$ 60
Estate Tax	24 (40%)
Net to Heirs	$ 36 ….. *in 2015*

Roth IRA Conversion and a Charitable Bequest Disclaimer

- **Pre-Mortem Planning:**
  Roth IRA Conversion
- **Post-Mortem Planning:**
  Charitable Bequest via Disclaimer
  (charity named as contingent beneficiary of a retirement account)

A ROTH IRA CONVERSION IS A TAXABLE EVENT

Treated as taxable withdrawal from traditional IRA or QRP, followed by a non-deductible contribution to a Roth IRA

Roth IRA & Estate Tax

	Assets
Cash, etc.	$ 4.1 million
IRA (*taxable IRD*)	1.0 million
Tx-exmp Roth	- 0-
Liab	-0-
Net Estate	$ 5.1 million

Roth IRA & Estate Tax

	Before	After
Cash, etc.	4.1	4.1
IRA	1.0	0.7
Tx-exmp Roth	- 0-	0.3
Liab	-0-	-0.1
Net Estate	5.1	5.0

Roth IRA & Estate Tax

	Before		After
Cash, etc.	4.1	paid>	4.0
IRA (*taxable IRD)*	1.0		0.7
Tx-exmp Roth	- 0-		0.3
Liab	-0-	paid>	-0-
Net Estate	5.1		5.0

Charitable Disclaimer

	Before	After
Cash, etc.	4.3	4.3
IRA	1.0	0.7
Tx-exmp Roth	- 0-	0.3
Charit. Bequest	- 0-	-0.2
Liab	-0-	-0.1
Net Estate	5.3	5.0

Charitable Disclaimer

	Before		After
Cash, etc.	4.3	paid>	4.2
IRA (*taxable*)	1.0	paid>	0.5
Tx-exmp Roth	- 0-		0.3
Charit. Bequest	- 0-	paid>	0.2
Liab	-0-	paid>	-0-
Net Estate	5.3		5.0 0.2

Charitable Disclaimer

Estate planner said to me: "Show me the child that will actually disclaim an inheritance to a charity to avoid an estate tax"

Charitable Disclaimer

- A charity the *child* supports
- Donor advised fund (problems with disclaimers to a private foundation)

HOW TO LEAVE A RETIREMENT ACCOUNT TO BOTH FAMILY & CHARITY

CHARITABLE BEQUESTS FROM QRPs

- Best type of bequest: taxable income !
- Easier than formality of a will: Name charity as beneficiary on form of plan
  -- no need for attorney to draft
  -- no need for witnesses, etc.

"You can't make a charitable bequest unless you have a will"

Wrong. A retirement plan is a trust with its own beneficiary designations. Like other trusts, assets can pass outside probate.

Name a charity as a beneficiary
- the cheapest "charitable remainder trust"

LIFETIME GIFTS: *ONLY IRAs*
BEQUESTS: *ANY QRP*

- 1. Sec. 401 – Company plans
- 2. Sec. 408 – IRAs
  - -- SEP & SIMPLE IRAs
- 3. Sec. 403(b) & 457–Charities
- 4. Roth IRAs & 401(k)/403(b)

Avoiding Problems With Charitable Bequests

* Let Other Beneficiaries Have Stretch IRA

*Keep IRD Off of Estate's Income Tax Return

* Guarantee Offsetting Charitable Income Tax Deduction if Have to Report Income

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WHAT CAN GO WRONG ?

TWO WAYS TO MAKE A CHARITABLE BEQUEST FROM A RETIREMENT ACCOUNT

#1 – NAME CHARITY AS BENEFICIARY OF THE ACCOUNT

#2 – PAY ACCOUNT TO ESTATE OR TRUST THAT THEN MAKES A CHARITABLE BEQUEST

Avoiding Problems With Charitable Bequests

* Let Other Beneficiaries Have Stretch IRA

*Keep IRD Off of Estate's Income Tax Return

* Guarantee Offsetting Charitable Income Tax Deduction if Have to Report Income

WHAT CAN GO WRONG #1?

- **Other beneficiaries cannot do *stretch IRA* if charity is beneficiary?**
- **<u>Solutions:</u>**

*** cash out charity's share by Sept 30**

or

*** separate account for charity**

WHAT CAN GO WRONG #2 ?

TWO WAYS TO MAKE A CHARITABLE BEQUEST FROM A RETIREMENT ACCOUNT

#1 – NAME CHARITY AS BENEFICIARY OF THE ACCOUNT

#2 – PAY ACCOUNT TO ESTATE OR TRUST THAT THEN MAKES A CHARITABLE BEQUEST

WHAT CAN GO WRONG #2?

Estate or trust has taxable income from receiving IRA distribution, but maybe there is no offsetting charitable income tax deduction when the IRA check is given to a charity.

WHAT CAN GO WRONG?

- **IRS Chief Counsel Memorandum ILM 200848020**
- Decedent left his IRA to a trust that benefited his six children and several charities
- Trust received cash from IRA; paid entire charitable share, leaving the six children as the only remaining beneficiaries of the trust.
- IRS: "Taxable income from IRA, but <u>no</u> charitable deduction." Reason: trust had no instructions to pay income to charities

WHAT CAN GO WRONG?

- <u>Solution #1 – Keep IRD off of estate's/trust's income tax return</u>

a. Name charity as beneficiary of IRA

b. "Distribute" IRA to charity if document allows

Caution: IRS memo on danger of using retirement accounts to satisfy <u>pecuniary</u> bequests p.41

WHAT CAN GO WRONG?

<u>SOLUTION #2</u> – draft document to get an offsetting charitable income tax deduction in case estate or trust has income

- *I instruct that all of my charitable gifts, bequests and devises shall be made, to the extent possible, from "income in respect of a decedent" .....* p.42