Vol. 13, No. 1 **Choate's Notes** Spring 2011

**A free newsletter for estate planners, from Natalie B. Choate**

Dear estate planning professional:

I have a new seminar topic, "**IRAs with Hair: What to do with an IRA That Has a Shady Past**." The seminar explains the ways an IRA can go off the rails, the IRS's arsenal of weapons for punishing errant IRAs, and remedies an advisor can use to help a client dig out of the hole the IRA fell into. The topic is dedicated to the originators of all the phone calls and emails I get that begin, "Our firm has a great new client, but one of the client's assets is an IRA that seems to have some hair on it…." See http://www.ataxplan.com/seminars/topics.cfm for details.

**Freebies:** IRC § 72(t) establishes a 10 percent penalty on "early distributions" (distributions prior to age 59½) from retirement plans. One exception to the penalty is for payments that are part of a "series of substantially equal periodic payments." See Chapter 9 of *Life and Death Planning for Retirement Benefits* (7th ed. 2011; www.ataxplan.com). Www.72t.net, is a website devoted to the "**SEPP**" exception. It provides free calculators, articles, and other resources.

Looking for **IRS private letter rulings**? They're posted free, newest first, at the IRS website, http://www.irs.gov/app/picklist/list/writtenDeterminations.html.

**Gideon Rothschild**, Esq., one of the country's top asset protection experts, has posted his excellent article on new developments in this growing field, "Staying out of Reach" (from a recent issue of *Trusts & Estates* magazine) at his firm's website. Read about the latest state laws and cases on asset protection at http://mosessinger.com/articles/files/AssetProtectionTrustsAndIRAs.pdf.

**Must read:** Sometime between now and the end of 2012 you will have at least one client who (1) converted a traditional plan to a Roth IRA in 2010, and (2) accepted the election to defer the resulting income into the years 2011–2012, and then (3) either **takes a distribution from the Roth IRA, or dies, in 2010 or 2012**. Taking a distribution (or dying) before 2012 accelerates inclusion of the deferred income—but of *how much* deferred income and into which year? An invaluable article in the April 2011 issue of *Ed Slott's IRA Advisor* newsletter explains exactly how the acceleration will work in every possible permutation of early distribution or death. See "When the 2-year Deal is Not Really a 2-year Deal." The same issue contains another invaluable article, the first CLEAR explanation I've seen of **how the AMT and Medicare premiums affect Roth conversion planning**; see "Dig Deeper for True Marginal Tax Rates," by Martin James, CPA. Subscribe to the *IRA Advisor* at www.irahelp.com (includes access to this and all other past issues).

**Other resources of interest:** Ethical wills are about transmitting values, as opposed to regular wills which are for transmitting money. *The Wealth of Your Life: Step-by-Step Guide for Creating Your Ethical Will*, by Susan Turnbull, is a handsome workbook for creating an ethical will. Learn more at http://www.personallegacyadvisors.com/.

Until the next issue,

Natalie B. Choate

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**Disclaimers: Essentials + New Deadline**

The "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" ("TRUIRJCA") has extended the deadline for making a qualified disclaimer of assets inherited from certain 2010 decedents. The normal deadline for a qualified disclaimer of inherited property is nine months after the later of: the date of death or the date on which the disclaiming person (the "disclaimant") attains age 21. See IRC § 2518(b)(2) and ¶ 4.4.04(A) of *Life and Death Planning for Retirement Benefits* (7th ed. 2011; www.ataxplan.com).

Section 301(d) of TRUIRJCA extends the nine-months portion of this deadline in the case of certain 2010 deaths: In the case of a person who died in 2010 but prior to enactment of TRUIRJCA, the deadline cannot be earlier than nine months after the date TRUIRJCA was enacted. TRUIRJCA was signed into law on December 17, 2010. September 17, 2011, is a Saturday, so the beneficiary of a decedent who died between January 1–December 19, 2010 (inclusive) has until September 19, 2011 (or until 9 months after such beneficiary turns age 21, if later) to disclaim inherited retirement benefits (or other inherited assets). See Reg. § 25.2518-2(c)(2).

When there is a qualified disclaimer of an inherited retirement benefit, the disclaimant is deemed to have predeceased the participant, so that the beneficiary who receives the benefits as a result of the disclaimer (rather than the original beneficiary-disclaimant) is treated as "the" beneficiary of the benefits, for income, estate, and minimum distribution purposes. See IRC § 2518, GCM 39858, and ¶ 4.4 of *Life and Death Planning for Retirement Benefits*.

The extension of the nine-months deadline to September 19, 2011, does NOT nullify any of the OTHER requirements of a qualified disclaimer. Thus, it is still vital, in order to have a qualified disclaimer, that the beneficiary who is purporting to disclaim the benefits also meet these tests:

- The disclaimant must not have "accepted" the benefits. Taking the minimum required distribution (MRD) for the year of the participant's death is not considered "acceptance" of the rest of the benefits for this purpose. Taking additional distributions (beyond the MRD for the year of the participant's death) might or might not constitute acceptance of the rest of the inherited account. Merely titling the account in the disclaimant's name might not be acceptance, but exercising investment control or "rolling over" the inherited benefit probably would constitute acceptance at least of the affected assets. See discussion at ¶ 4.4.04 of *Life and Death Planning for Retirement Benefits*.

- The benefits must pass, as a result of the disclaimer, either to the participant's surviving spouse or to someone who is not the disclaimant. For example, if, as a result of the disclaimer, the benefits will pass to the participant's estate, it is essential that the disclaimant not be a beneficiary of the estate (unless he/she is the participant's surviving spouse). See ¶ 4.4.08(A) of *Life and Death Planning for Retirement Benefits*.

- The benefits must pass to whomever they pass to WITHOUT any direction by the disclaimant. The participant's surviving spouse is NOT exempted from this requirement. See ¶ 4.4.08(B) of *Life and Death Planning for Retirement Benefits*.

Make sure that your clients involved with estates of 2010 decedents are aware of this valuable extended planning opportunity.

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