## CHOATE'S NOTES: May 2024

*Separate accounts for subtrusts for RMD purposes*

Darla dies at age 48, leaving her IRA to the Darla Revocable Living Trust. The trust provides that upon her death all trust assets are to be allocated equally to four separate trusts ("subtrusts"), one each for her surviving spouse Dan and her three children Larry, Moe, and Curly.

Dan is age 50, twins Larry and Moe are age 22, and baby Curly is 12. None of the four beneficiaries is disabled or chronically ill. The trust for Dan is a conduit trust. Each child's trust will be distributed outright to him at age 31 (with trustee using the trust assets for the child's benefit prior to that age).

Your job is to determine what the "RMD" payout period will be for these trusts. The charts in Appendix B of my outline posted (free) at ataxplan.com explain exactly what RMD payout period applies to any trust based on who are the "countable beneficiaries" of such trust.

But which trust are you testing—the separate subtrusts, or the big "funding trust" that was actually named as beneficiary of the IRA? Ummm... that depends: Under the proposed regulations, there will be quite different payout periods based on slight changes in the facts.

**Result #1:** According to the IRS, Darla's trust is treated as one big trust with four beneficiaries. Why? Because Darla did not name the individual "subtrusts" as beneficiaries on her IRA beneficiary designation form—she named the "funding" trust. In the IRS view, since one of the four beneficiaries is a "minor child eligible designated beneficiary" (EDB), the payout period is: A life expectancy payout based on the life expectancy of the oldest countable beneficiary (Dan; life expectancy 36 years), with a final payout of 100% required 10 years after baby Curly reaches age 21 [or earlier dies] so 19 years from now [unless Curly dies before age 21].

**Result #2:** If Darla had named the subtrusts specifically as her beneficiaries instead of naming the "funding" trust, the result would have been quite different. Each subtrust would be treated as a separate beneficiary: Dan's trust would get a life expectancy payout based on his life expectancy recalculated annually, and it would last for his whole life (not just 19 years). The twins would get the 10-year rule with no annual distributions in years 1-9 (instead of a 19-year payout with distributions every year). And Curly would get a 19-year payout (to his age 31 year), with annual payments based on HIS life expectancy (over 70 years) instead of on Dan's 36-year life expectancy.

**Result #3:** Change the facts slightly—suppose one of the twins is disabled. Since now there is a "disabled or chronically ill" individual in the mix, the four subtrusts are treated as separate designated beneficiaries REGARDLESS of whether Darla named the funding trust or the subtrusts in her beneficiary designation form, so the result is the same as #2!

Which is the better result for these beneficiaries: Separate accounts for each subtrust? or treatment as a single trust with four beneficiaries? It may be impossible to tell at the planning stage.

The ideal way to deal with the problem would be to have a savvy trustee and name the subtrusts as beneficiaries on the beneficiary designation form. Then leave it to the trustee to NOT actually create separate accounts for the subtrusts by the applicable deadline (December 31 of year after year of death) if the trustee determines one-big-trust treatment would be more beneficial to the trust beneficiaries than the separate accounts/subtrusts treatment!

Or better yet the trustee could timely create a "separate account" for Dan's subtrust (so he gets his full life expectancy payout as surviving spouse) and leave the other three subtrusts as a "single account" (so the older boys get the benefit of the longer payout due to Curly's status as a minor child-EDB).

I will cover separate accounts and all other post-SECURE estate planning (and administration) choices and issues in my upcoming Boston Tax

Institute webinar on May 31. Also included: A look at the new landscape for pre-age-59½ distributions: the 10% penalty now has almost two dozen exceptions!

*For details or to register, visit:*

https://bostontaxinstitute.com/product/estate-planning-and-drafting-for-retirement-benefits-after-the-secure-act-on-demand-seminar/

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*Happy spring!*

Natalie Choate

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Natalie B. Choate, Esq.
Ataxplan Publications
Wellesley, Massachusetts