

# SECURE Act Update

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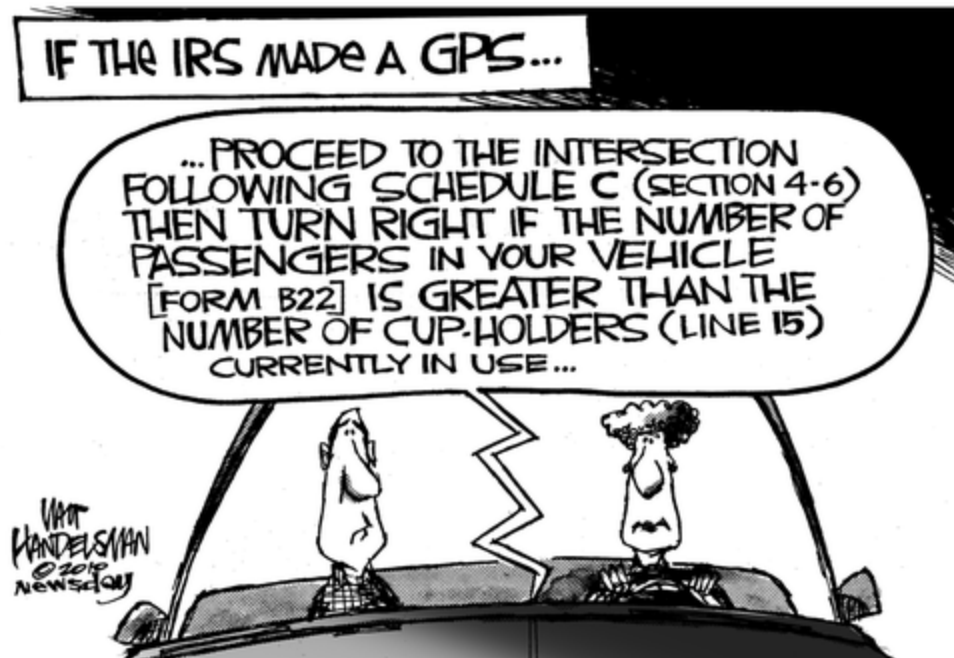


# Topics

- RMD Overview
- Trusts and RMD Planning
- Qualified Charitable Rollover
- SECURE Act Misc. & Planning Considerations



# Required Minimum Distributions Overview



# Required Minimum Distributions Overview

## Topics to Cover

- Date of Death and Impact on Applicable Law
- Overview of the New Classes of Beneficiaries
- Discuss RMDs for Each Class



# Required Minimum Distributions Overview

## Date of Death and Applicable Law

- Deaths prior to 2020 are governed by the old rules.
- Deaths after 2020, including death of owner of an inherited IRA, are subject to the new rules.



# Required Minimum Distributions Overview

## Classes of Beneficiaries

- Non-Designated Beneficiaries:
  - Non-Qualified Trust
  - Estate, or
  - Charity



# Required Minimum Distributions Overview

## Classes of Beneficiaries

- Eligible Designated Beneficiaries:
  - Spouse
  - Disabled Beneficiary
  - Chronically Ill Beneficiary
  - Individuals not more than 10 years younger than decedent
  - Minor children *of decedent* during minority





# Required Minimum Distributions Overview

## Classes of Beneficiaries

Disabled Beneficiary Definition: Same as Social Security Disability Definition –

An individual shall be considered to be disabled if he is unable to engage in any **substantial gainful activity** by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.



# Required Minimum Distributions Overview

## Classes of Beneficiaries

Chronically Ill Beneficiary Definition: The term “chronically ill individual” means any individual who has been certified by a licensed health care practitioner as—

- **2 ADLs** - being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,
- **Similar to 2 ADLs** - having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described immediately above, or
- **Institutionalization** - requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.



# Required Minimum Distributions Overview

## Classes of Beneficiaries

- Designated Beneficiaries: Everybody Else



# Required Minimum Distributions Overview

## Summary of RMDs for Each Class of Beneficiaries

- Non-Designated Beneficiaries: Old Rules
- Eligible Designated Beneficiaries: Lifetime Stretch
- Designated Beneficiaries: New 10 Year Rule



# Required Minimum Distributions Overview

## Review of RMDs for Non-Designated Beneficiaries (NQ Trust, Estate or Charity)

- 5 Year Payout if Decedent Died Before 72
- Decedent's Life Expectancy on Single Life Tables
- New Regulations Likely: 72 years old through 80 years old life expectancy > 10 Years



# Required Minimum Distributions Overview

## RMDs for Eligible Designated Beneficiaries

(Spouse, Disabled, Chronically Ill, Beneficiaries Not More than 10 Years Younger, Minor Children of Decedent During Minority)

- General Rule: RMD is Based on the Beneficiary's Life Expectancy under the Service's Single Life Table
- Disabled and Chronically Ill only qualify for General Rule if Disabled or Chronically Ill *at Participant's Death* (No guidance on oversight for this by government)
- Minor children only qualify for the general rule if (1) of decedent and (2) through minority ("minority" is not defined so presumably state law governs – 18 in NY)



# Trusts and RMD Planning



# Trusts and RMD Planning

## Types of Trusts as related to RMDs

- Conduit Trusts – Directs the Distribution of RMD to the Conduit Beneficiary.
- Accumulation Trusts – Allows Trustee Discretion to Distribute the RMD to the Beneficiary or Retain and Accumulate RMDs.





# Trusts and RMD Planning

## Looking Through The Trust

- “Sole Benefit” remains under SECURE and is the only way to look through the Trust for purposes of using Eligible Designated Beneficiary Status.
- Conduit Trust sole benefit is Conduit Beneficiary
- Accumulation has no sole benefit status so generally cannot attain Eligible Designated Beneficiary Status.

See 1.401(a)(9)-5, A-7(c)(1) which states, “for example, if the first beneficiary has a right to all income with respect to an employee's individual account during that beneficiary's life and a second beneficiary has a right to the principal but only after the death of the first income beneficiary (any portion of the principal distributed during the life of the first income beneficiary to be held in trust until that first beneficiary's death), both beneficiaries must be taken into account in determining the beneficiary with the shortest life expectancy and whether only individuals are beneficiaries.”

Supplemental Needs Trusts discussed in detail later.



# Trusts and RMD Planning

## Issues Related to SECURE Act and Conduit Trusts

- Conduit Trust says pay only RMD. For a Beneficiary Subject to the 10 year rule, there is no RMD until the final year.
- Conduit Trust allows for more than RMD distribution for a Beneficiary subject to the 10 year rule, can realize income piecemeal over the 10 years.
- Conduit Trust for Spouse will still qualify for stretch under pre-SECURE rules.



# Trusts and RMD Planning

## SECURE Act and Accumulation Trusts Issues

- The Main Issue: Control v. Income Taxes
- SNTs – SECURE act says that accumulation for the sole life benefit of a Chronically Ill or Disabled Beneficiary qualify for the lifetime stretch. On the death of the Beneficiary, the remainder beneficiary(ies) are subject to the SECURE rules.



# Trusts and RMD Planning

## Charitable Remainder Unitrust

- Assumptions: (1) \$1,000,000 IRA (2) 7% Growth (3) 7% Distribution (4) 40% Tax Rate
- 54 Year Old Beneficiary: (1) Individual Receives \$1,200,000 over 26 Years (2) Charity Receives \$953,000
- 40 Year Old Beneficiary: (1) Individual Receives \$1,500,000 over 38 Years (2) Charity Receives \$932,000
- Younger Beneficiary Violates 10% Charitable Remainder Rule



# Qualified Charitable Rollovers



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# Qualified Charitable Rollovers

- Still available at 70.5 despite change in RMD age
- SECURE Act allows contributions at any age creating a potential for abuse of QCR by making post 70.5 contributions and then doing a QCR.
- SECURE Act provides that post 70.5 contributions will be deducted from any QCR.
- Example: Client makes \$20,000 of contributions to IRA post-70.5. Later, Client attempts to make \$50,000 QCR. Only \$30,000 qualifies as QCR. The remaining \$20,000 may be used as an itemized deduction.



# SECURE Act Misc. & Planning Considerations

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## INVESTMENTS AND RETIREMENT PLANNING



**“You have to spend money to make money. So I bought myself a cabin cruiser, luxury sports car, and a giant screen plasma TV.”**



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# SECURE Act Miscellaneous

- No early withdrawal penalty for qualified birth or adoption distribution up to \$5,000 per parent per child within 1 year after birth or adoption finalized.
- Kiddie Tax reverts back to parents' tax rates rather than estates/trusts rates.
- Qualified Medical Expenses must be 7.5% of AGI for itemized deductions.
- Deductions available for mortgage insurance premiums and qualified tuition.
- 529 Plans - Student loans payments and apprenticeship programs are now “qualified expenses”, but
  - Only up to \$10,000 for student loan payments per beneficiary
  - Disqualifies student loan interest deduction if used to pay interest





## Estate Planning Considerations under SECURE

- If Decedent died in 2019 and Disclaiming IRA to Children is Available, Consider Disclaiming.
- ROTH Conversions Much More Valuable
- Use of RMDs to Fund Life Insurance; Second to Die Policies Affordable/ Attractive to Some
- Trusteed IRAs to Replace Some Conduit Trusts and Avoid Hassel of Legal Planning
- The Trust Conversation is Largely Tax v. Control.



# Questions??

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