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ADVANTAGES OF IRA TRUST

Individual Retirement Accounts have been around close to thirty years now, so they are increasingly becoming a larger share of many people's assets. When I mention Individual Retirement Accounts, I am also referring to Simplified Employee Pensions (SEPs), 401(k), 403(b), and other qualified pension and profit sharing plans.

Congress enacted these retirement accounts in an effort to reduce the average person's dependence on social security, and to replace the disappearing corporate pension accounts with private savings. In an effort to promote IRA accounts, Congress made contributions to the accounts tax deductible and growth within the accounts tax deferred. Since the accounts were designed to be consumed during one's retirement, Congress imposed "minimum required distributions" after the account holder turned 70½. As the account holder ages, the distribution percentages increase. The law was also designed to benefit spouses, as spouses are the only ones who may "roll over" an IRA with no estate or income tax consequence on the transaction.

But all of the benefits were designed to stop, and stop rather abruptly, upon the death of the surviving spouse. Children are not eligible for an IRA tax deferred rollover. Estate taxes are imposed. Income taxes are imposed and often accelerated. According to recent IRS statistics, more than 85% of IRA balances are withdrawn by children beneficiaries within six months following the account holder's death. This may result in the IRA literally being "taxed to death" when one calculates the income and estate tax ramifications of these withdrawals.

Recently, however, the tide has started to change. The IRS began allowing "stretch" provisions for certain types of beneficiaries. In short, a child beneficiary may withdraw the IRA over his or her life expectancy following his mother or father's death. This stretch allows for enormous savings and potential tax deferred growth. Allow me to illustrate by example.

Suppose that Lucy names her three children, Alice, Ben and Charlie, as the beneficiaries of her IRA. Assume that Alice is 43 as of Lucy's death and receives a 1/3 share of a

modest \$300,000. In other words, Alice's share is \$100,000. If Alice withdraws the entire balance as the IRS says that she is likely to do, her net will approximate \$62,000, depending upon her marginal income tax rate and if she resides in a state with state income taxes.

If instead Lucy created an IRA Legacy Trust™ that mandates Alice only withdraw her minimum required distribution each year, (and additional amounts if Alice requires same for her health or support for example) and if Alice only withdraws her minimum amount, then in the first year following Lucy's death then Alice will only withdraw \$1,870.00. (1/53.4 under the IRS Uniform Life Table which is now the law).

Assuming that Alice's share of the IRA grows at an average rate of only 7%, then over Alice's lifetime she will be able to withdraw over \$1.3 million from the IRA share that her mother left her. Does Lucy want to leave her daughter a net \$65,000 or \$1.3 million over the course of her daughter's life? All of this, remember with a very modest IRA. Do the math if the IRA balance in your own account is higher.

Lucy probably wishes to establish an IRA Legacy Trust™ for her children as opposed to leaving them as direct beneficiaries. First, the Trust will mandate that the amounts above the minimum distributions are not withdrawn unless necessary for health and support, allowing for tax deferred growth over the children's respective lifetimes. Second, the IRA Legacy Trust™ provides for protection if any of the children get divorced or experience other creditor problems. Keep in mind that under a Private Letter Ruling from 2005, Revocable Trusts are no longer the preferred way to leave an IRA in trust to ensure the benefits mentioned above. Clients generally should ask their attorney about a stand alone trust, such as the IRA Legacy Trust™, which is the trademarked name that we use in my law firm for our unique process to achieve maximum tax deferred growth and distributions. If you haven't reviewed your IRA strategy with your estate planning counsel, make sure that you don't let that go too long.

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