The Secure Act

The Mathematics of Estate Planning for IRAs

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Outline

- The new post-mortem payout rules
- IRA Beneficiary Trust basics after SECURE
- The Conduit Trust Disaster created by the SECURE Act
- Solutions to Analyze

SECURE BILL KEY CHANGES

RMDs after Death

EFFECTIVE DATE:

Deaths which Occur After 12/31/19

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RMDs after Death

Basically, requires all IRAs, Roth IRAS, and Qualified Plans to be distributed within 10-years of death

RMDs after Death

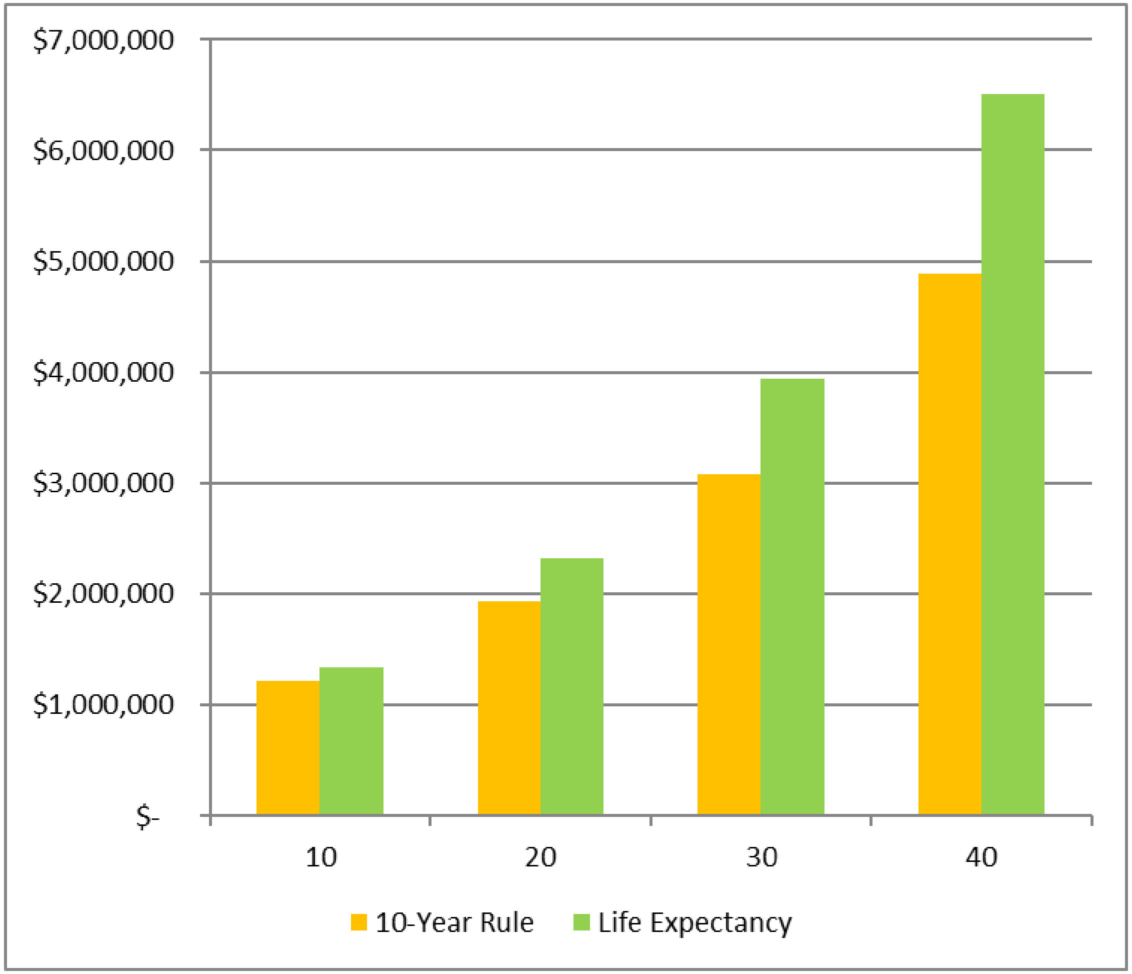
Example

Ten-Year vs. Life Expectancy

Age of (Oldest Trust) Beneficiary	40
IRA Balance	$ 1,000,000
Pre-Tax Growth Rate	6.00%
After-Tax Growth Rate	4.75%
Average Income Tax Rate - Life Expectancy Rule	24.00%
Average Income Tax Rate - Ten Year Rule	28.00%
Distributions Occur at Beginning or End of Period?	End
Lump-Sum Distribution or Amortize Payments?	Amortize

RMDs after Death

Example



RMDs after Death

Exceptions from the 10-year Rule for certain beneficiaries ("eligible designated beneficiary")

- Surviving Spouse
- The employee's Children under the age of majority *(not grandchildren or any other children)*
- Disabled
- Chronically ill
- Individual not more than ten years younger than employee

§§ 401(a)(2)(E)(ii)

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Secure Act Beneficiary RMD Summary

Tax Terminology	Designated Non-Eligible Beneficiary	Surviving Spouse	Eligible Minor Child	Person Less Than 10 Years Younger	Disabled or Chronically Ill Person
Outright Beneficiary	10-Year Rule	Life Expectancy Rule	Life Expectancy Rule (Until Majority then 10-Year Rule)	Life Expectancy Rule	Life Expectancy Rule
Conduit Trust	10-Year Rule	Life Expectancy Rule	Life Expectancy Rule (Until Majority then 10-Year Rule)	Life Expectancy Rule	Life Expectancy Rule
Designated Beneficiary Trust	10-Year Rule	10-Year Rule	10-Year Rule	10-Year Rule	Life Expectancy Rule
Non-Designated Beneficiary Trust	Before RBD: 5-Year Rule	Before RBD: 5-Year Rule	Before RBD: 5-Year Rule	Before RBD: 5-Year Rule	Before RBD: 5-Year Rule
	After RBD: Ghost Life Expectancy Rule	After RBD: Ghost Life Expectancy Rule	After RBD: Ghost Life Expectancy Rule	After RBD: Ghost Life Expectancy Rule	After RBD: Ghost Life Expectancy Rule

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Trusts for Disabled and Chronically Ill Beneficiaries

- Life Expectancy Treatment is Available with a "Eligible Designated Beneficiary Trust"
- Need to Draft an Accumulation Trust
- Roth IRAs may work better due to:
  - The difference in the individual and trust tax rates
  - The ability to pay the income tax on conversion out of nonqualified funds
- Two trusts is advisable if the client has both a traditional IRA and a Roth IRA – this avoids "trapping" the taxable IRA income

401(a)(9) Regulations

Foundational Concepts – Pre-Secure Bill

	Death <u>Before</u> Required Beginning Date	**Death <u>On or After</u> Required Beginning Date**
Designated Beneficiary	*Life Expectancy Rule*	*Life Expectancy Rule*
Non-Designated Beneficiary	*Five-Year Rule*	*Owner's "Ghost" Life Expectancy Rule*

Both the Five-Year and "Ghost" Life Expectancy appear to have survived the Secure ACT for non-designated beneficiaries.

401(a)(9) Regulations

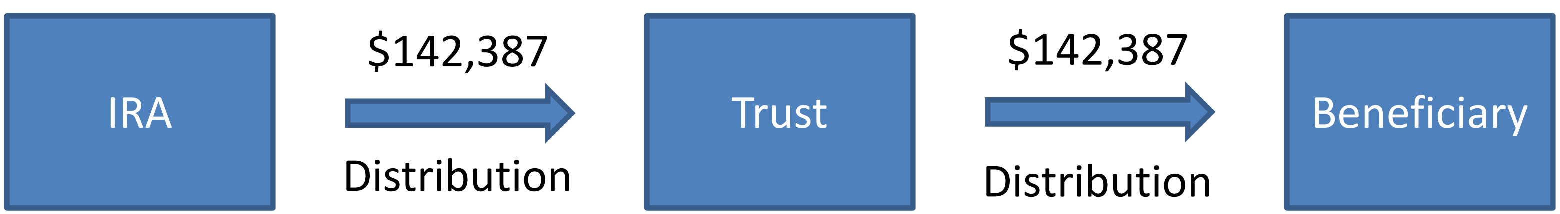
Foundational Concepts

Single Life Table

Age	Divisor	Age	Divisor	Age	Divisor	Age	Divisor	Age	Divisor	Age	Divisor	Age	Divisor
0	82.4	16	66.9	32	51.4	48	36.0	64	21.8	80	10.2	96	3.8
1	81.6	17	66.0	33	50.4	49	35.1	65	21.0	81	9.7	97	3.6
2	80.6	18	65.0	34	49.4	50	34.2	66	20.2	82	9.1	98	3.4
3	79.7	19	64.0	35	48.5	51	33.3	67	19.4	83	8.6	99	3.1
4	78.7	20	63.0	36	47.5	52	32.3	68	18.6	84	8.1	100	2.9
5	77.7	21	62.1	37	46.5	53	31.4	69	17.8	85	7.6	101	2.7
6	76.7	22	61.1	38	45.6	54	30.5	70	17.0	86	7.1	102	2.5
7	75.8	23	60.1	39	44.6	55	29.6	71	16.3	87	6.7	103	2.3
8	74.8	24	59.1	40	43.6	56	28.7	72	15.5	88	6.3	104	2.1
9	73.8	25	58.2	41	42.7	57	27.9	73	14.8	89	5.9	105	1.9
10	72.8	26	57.2	42	41.7	58	27.0	74	14.1	90	5.5	106	1.7
11	71.8	27	56.2	43	40.7	59	26.1	75	13.4	91	5.2	107	1.5
12	70.8	28	55.3	44	39.8	60	25.2	76	12.7	92	4.9	108	1.4
13	69.9	29	54.3	45	38.8	61	24.4	77	12.1	93	4.6	109	1.2
14	68.9	30	53.3	46	37.9	62	23.5	78	11.4	94	4.3	110	1.1
15	67.9	31	52.4	47	37.0	63	22.7	79	10.8	95	4.1	111	1.0

Math of the Conduit Trust Disaster

- A conduit ("safe–haven") trust requires all RMDs to be paid annually
- This worked well under the life expectancy rules
- However, it is a disaster under the 10-year rule
- In year ten, the entire remaining IRA balance must be paid to the beneficiary



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The Conduit Trust Disaster

Illustrated

Years after Death	Age	RMD Current Method	10-Year Rule Options Equal Schedule	Full Deferral
0	30	$18,762	$142,378	$0
1	31	$20,100	$142,378	$0
2	32	$21,535	$142,378	$0
3	33	$23,072	$142,378	$0
4	34	$24,720	$142,378	$0
5	35	$26,486	$142,378	$0
6	36	$28,379	$142,378	$0
7	37	$30,409	$142,378	$0
8	38	$32,584	$142,378	$0
9	39	$34,917	$142,378	$0
10	40	$37,417	$142,378	$1,967,151

Assumes $1,000,000 IRA at death & a 7% interest rate

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PLANNING SOLUTIONS TO ANALYZE

Solutions to Analyze

Overview

- Roth conversions
- Multi-generational spray trusts
- Avoiding the *new* spousal rollover trap
- IRAs to CRTs
- IRA trusts for state income tax savings
- Life Insurance strategies
- Naming a charity as a beneficiary

ROTH CONVERSIONS

As it relates to the new 10-year rule, the purpose of Roth Conversions is to spread distributions over many years and lower brackets

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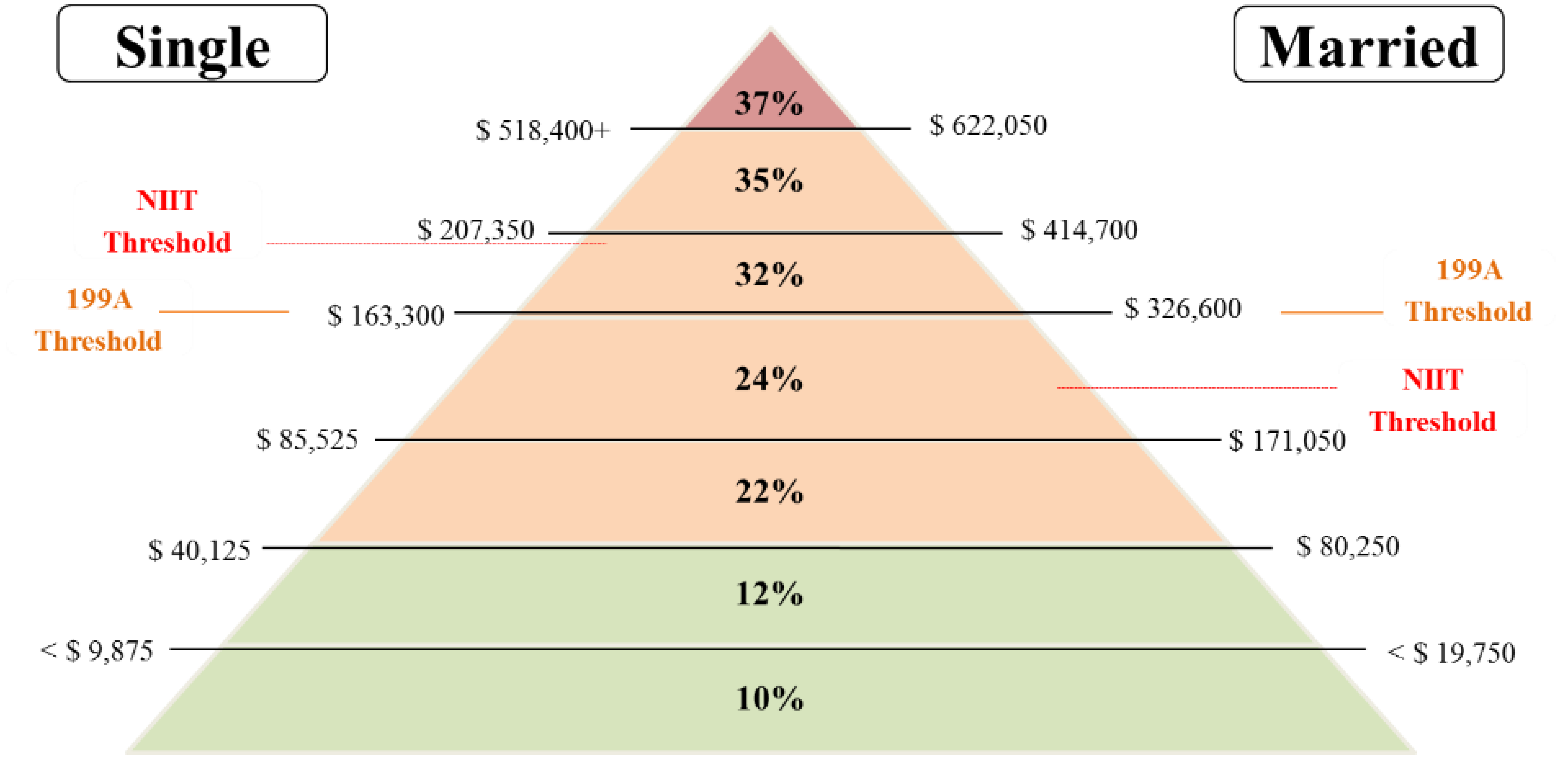
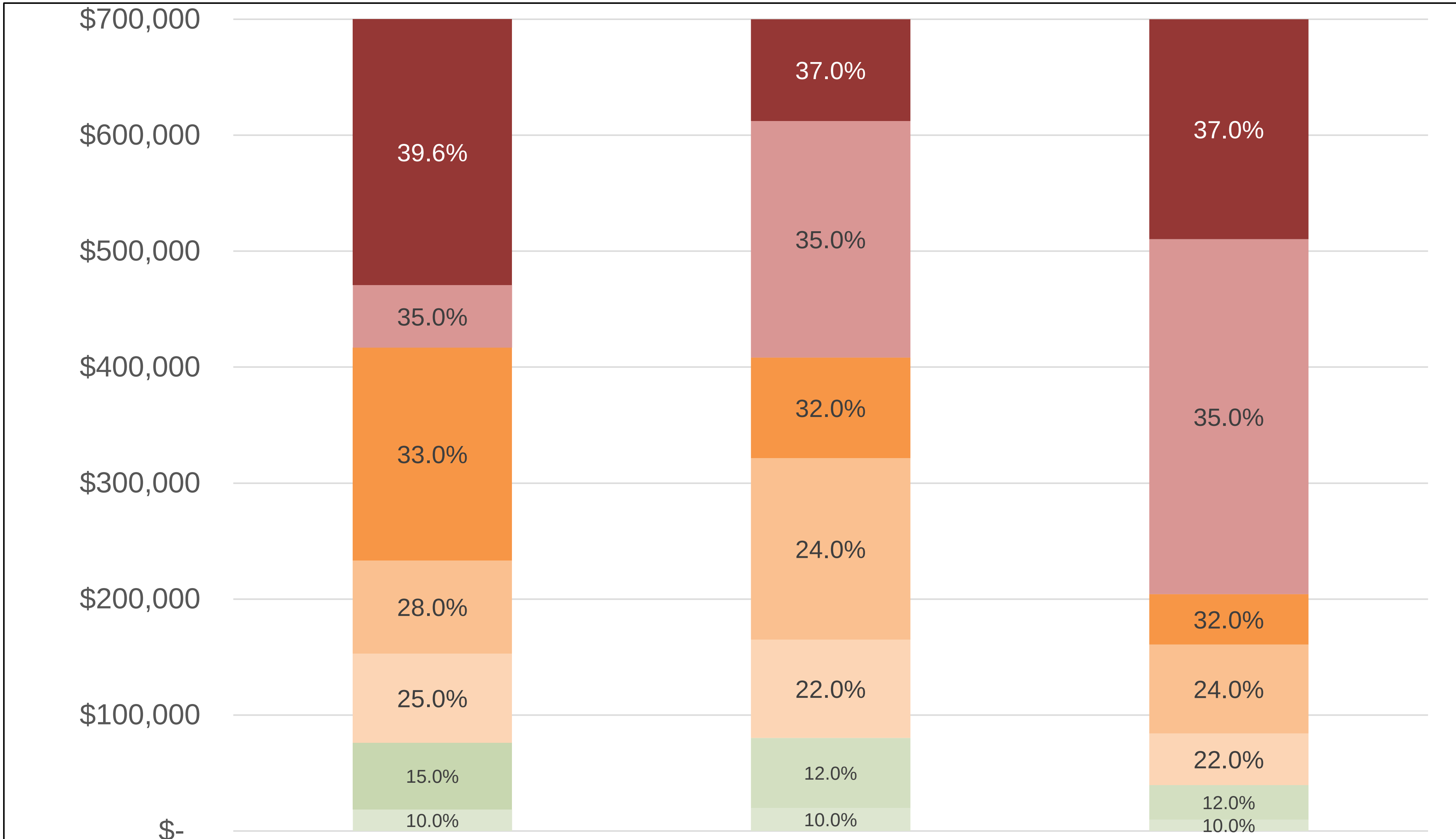
2020 Tax Brackets



2017 Married	2020 Married	2020 Single



Taxation of Roth IRA Distributions

	Distribution within 5 years	Distribution beyond 5 years
Age < 59½	Income Tax: Yes (earnings only) 10% Penalty: Yes (earnings & taxable portion of prior conversion amounts)	Income Tax: Yes (earnings only) 10% Penalty: Yes (earnings only)
Age ≥ 59½	Income Tax: Yes (earnings only) 10% Penalty: No	Income Tax: No 10% Penalty: No

Mathematics of Roth IRA Conversions

- In simplest terms, a traditional IRA will produce the same after-tax result as a Roth IRA provided that:
  - The annual growth rates are the same
  - The tax rate in the conversion year is the same as the tax rate during the withdrawal years (i.e. A x B x C = D; A x C x B = D)

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Mathematics of Roth IRA Conversions

		Traditional IRA		Roth IRA		Life Insurance
Current Account Balance	$	1,000,000	$	1,000,000	$	1,000,000
Less: Income Taxes @ 40%		-		(400,000)		(400,000)
Net Balance	**$**	**1,000,000**	**$**	**600,000**	**$**	**600,000**
Growth Until Death		300.00%		300.00%		300.00%
Account Balance @ Death	$	3,000,000	$	1,800,000	$	1,800,000
Less: Income Taxes @ 40%		(1,200,000)		-		-
Net Account Balance to Family	**$**	**1,800,000**	**$**	**1,800,000**	**$**	**1,800,000**

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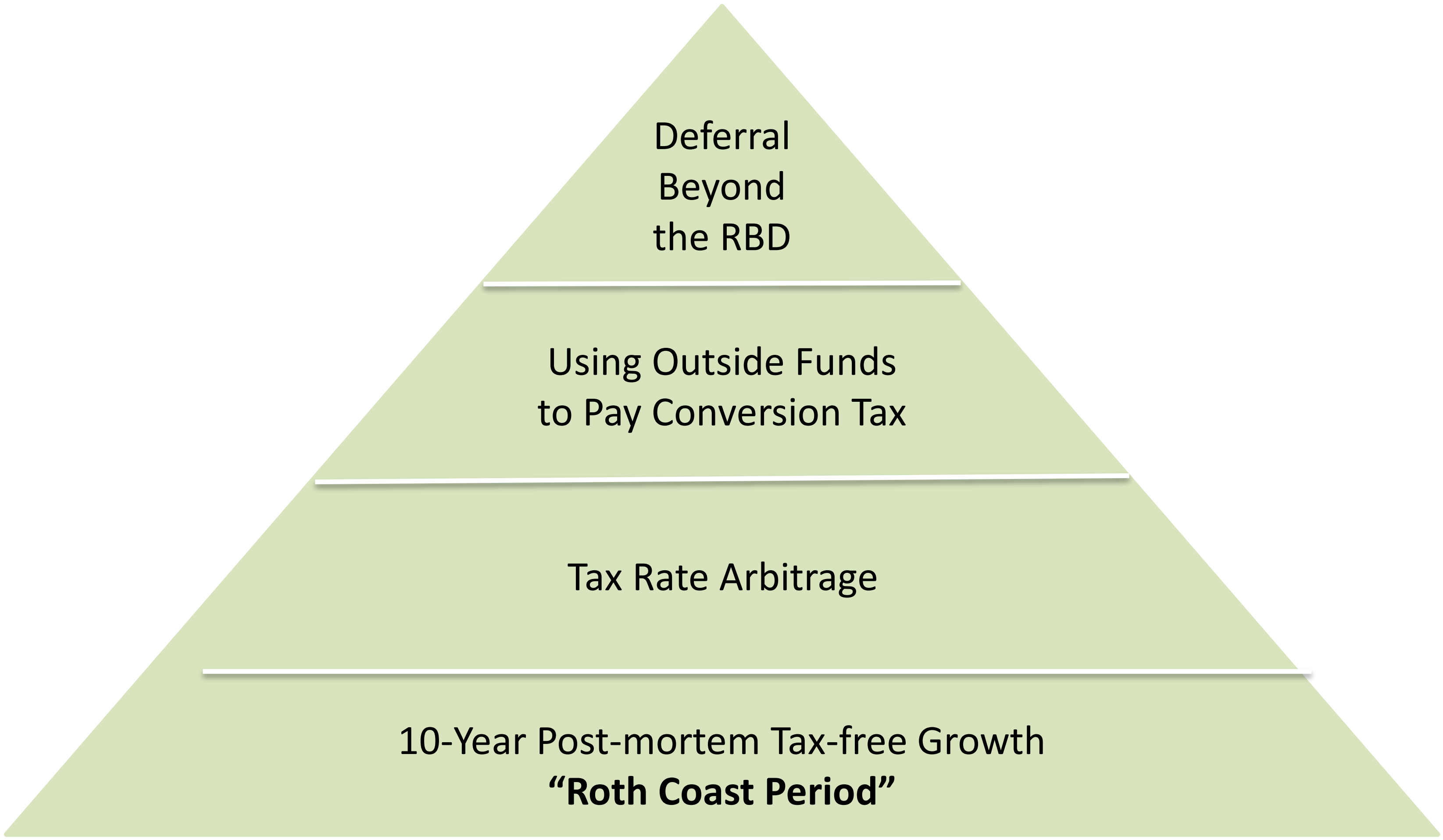
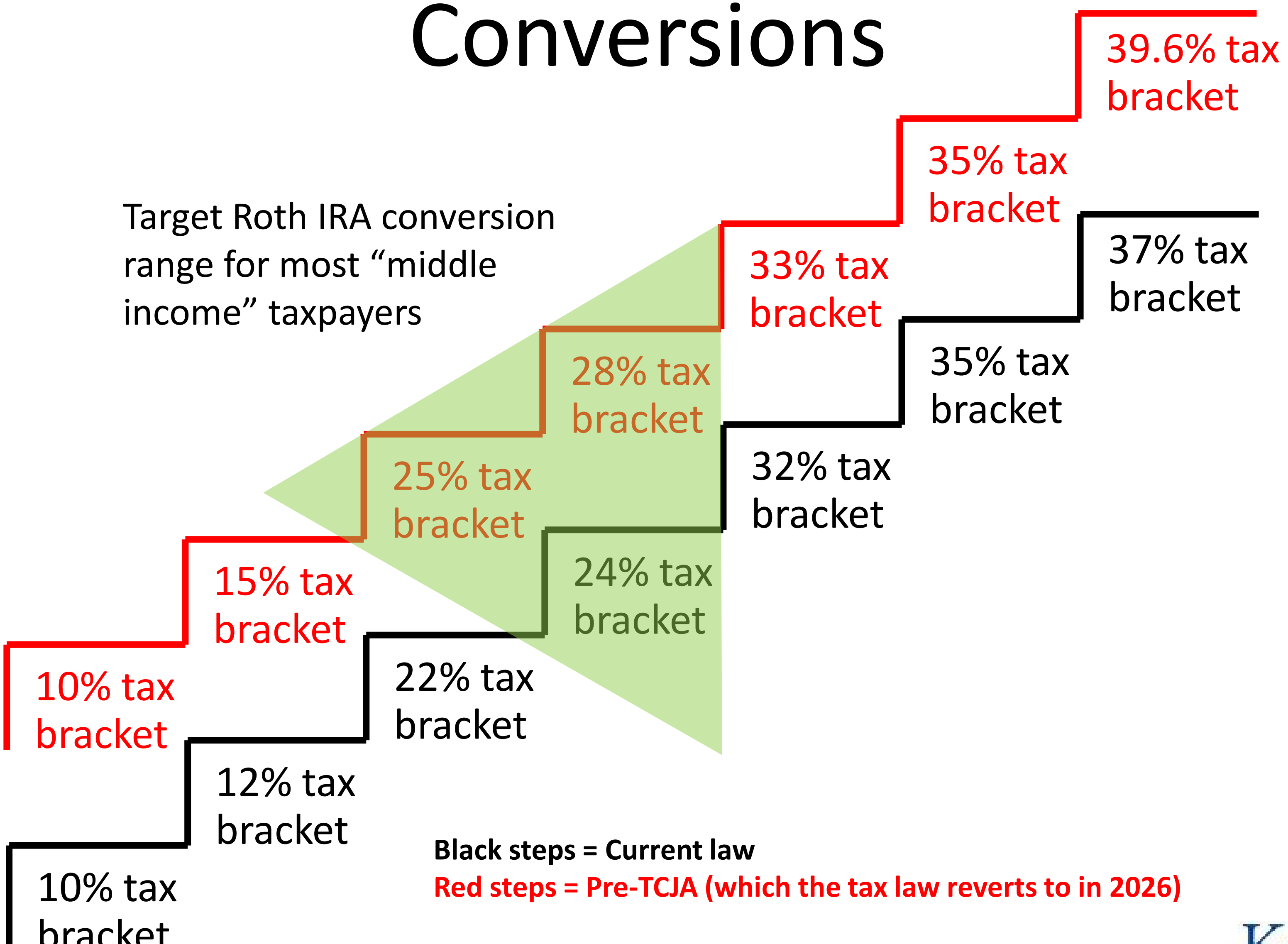
Mathematics of Roth IRA Conversions



Mathematics of Roth IRA Conversions



Estate Tax Considerations

- "Missing" IRC § 691(c) deduction
  - When a taxpayer dies with an item of Income in Respect of a Decedent (IRD), such as a traditional IRA, in his/her taxable estate the estate (and/or its beneficiaries) must not only pay estate tax on the IRD but also pay income tax on the IRD
  - To prevent double-taxation of IRD, the federal income tax law allows an income tax deduction (on IRS Form 1040, Schedule A), for federal estate taxes paid on IRD
  - This is typically known as the "IRC § 691(c) deduction"

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Estate Tax Considerations

- “Missing” IRC § 691(c) deduction
  – The dilemma with the IRC § 691(c) deduction is that it only is available for federal estate taxes paid on IRD, not state death/estate taxes
  – Thus, the state death/estate tax portion is subject to tax twice (i.e. “missing” IRC § 691(c) deduction)

Estate Tax Considerations

- "Missing" IRC § 691(c) deduction example

	Traditional IRA	Roth IRA
IRA balance	$ 1,000,000	$ 1,000,000
Less: Federal and state income taxes on Roth IRA conversion (40%)	-	(400,000)
Taxable Estate	$ 1,000,000	$ 600,000
Federal estate tax (35%)	$ 350,000	$ 210,000
State death tax (10%)	100,000	60,000
Total estate taxes	$ 450,000	$ 270,000
Post-death traditional IRA balance	$ 1,000,000	
Less: IRC §691(c) deduction	(350,000)	
Post-death traditional IRA balance subject to income tax	$ 650,000	
Federal and state income taxes on IRA distributions (40%)	$ 260,000	$ -
Net IRA balance to beneficiaries	**$ 290,000**	**$ 330,000**

Reconciliation: $100,000 state death tax x 40% post-death income tax rate = $40,000 (double-tax component) *OR* $400,000 income tax on conversion x 10% state death tax rate = $40,000 (estate tax savings)

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Estate Tax Considerations

- "Fading" IRC § 691(c) deduction
  - Another dilemma with the IRC § 691(c) deduction is that it is only calculated on the value of the IRD at the time of death
  - Thus, post-death appreciation is not sheltered against income tax by the IRC § 691 deduction, resulting in additional income tax being incurred (i.e. "fading" IRC § 691(c) deduction)

Frozen-in-Time

Estate Tax Considerations

- "Fading" IRC § 691(c) deduction example

				Roth IRA Conversion at Death
		No Planning		
Traditional IRA balance at death	$	1,000,000	$	1,000,000
Less: IRC §691(c) deduction		-		(450,000)
Taxable portion of Roth IRA conversion	$	1,000,000	$	550,000
Federal and state income taxes on Roth IRA conversion (40%)	$	-	$	220,000
IRA balance available for future distributions	$	1,000,000	$	780,000
Total future IRA distributions	$	2,000,000	$	1,560,000
Less: IRC §691(c) deduction		(450,000)		-
Less: Amounts not subject to income tax		-		(1,560,000)
Taxable portion of future IRA distributions	$	1,550,000	$	-
Federal and state income taxes on future IRA distributions (40%)	$	620,000	$	-
After-tax total future IRA distributions	**$**	**1,380,000**	**$**	**1,560,000**

Reconciliation: $1,560,000 - $1,380,000 = $180,000 *OR* $620,000 future income tax liability - $440,000 future value of income tax liability on Roth IRA conversion (i.e. $220,000 x 2).

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MULTI-GENERATION SPRAY TRUST

As it relates to the new 10-year rule, the purpose of using a spray trust is to spread income across a large number of taxpayers thereby lowering the effective rate and to retain the ability to accumulate income as prudent.

WARNING: Don't forget about the "kiddie" tax

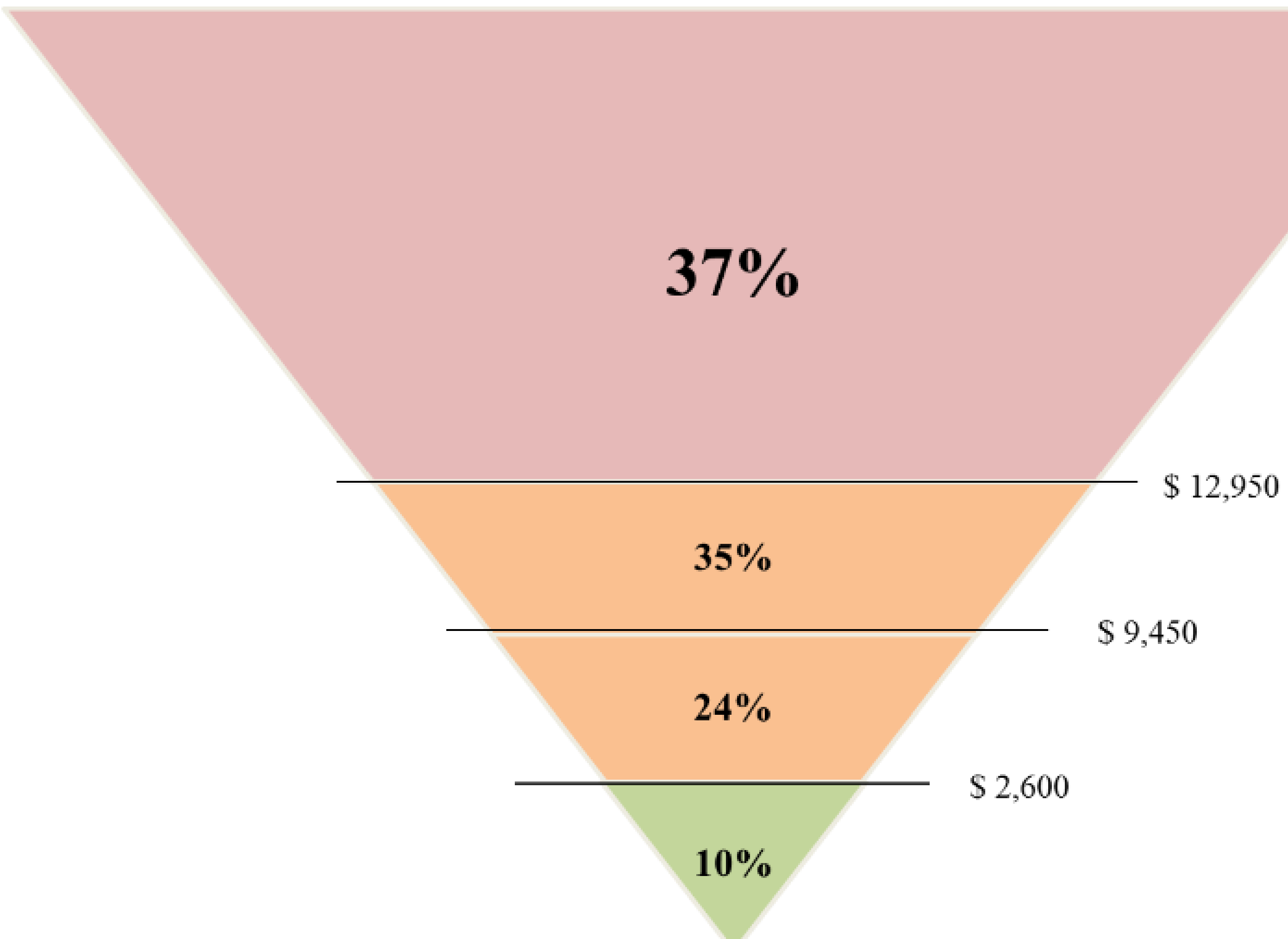
Foundational Concepts
General Trust Tax Rules

- Income taxed to either the trust or the beneficiaries
  - If income is accumulated, then the income is taxed to the trust/estate
  - If income is distributed, then the trust/estate gets an income tax deduction and beneficiaries report taxable income
  - IRC § §(661-663)

Consider how Roth's are taxed

Foundational Concepts

2020 Ordinary Income Tax Rates for Estates & Trusts



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Foundational Concepts
Types of “Income”

- Fiduciary accounting income
  - Governed by state law and the trust instrument
  - Determines the amount that may or must pass to the trust’s or estate’s beneficiaries
- Tax accounting income
  - Governed by the federal income tax law
  - Determines who is taxed on the income

Foundational Concepts

Typical Types of “Income” Under Traditional Fiduciary Accounting

- Interest
  - Taxable
  - Tax-exempt
- Dividends
- Rents (net of expenses)
- Royalties
- A portion of IRAs and/or RMDs (varies by state law)

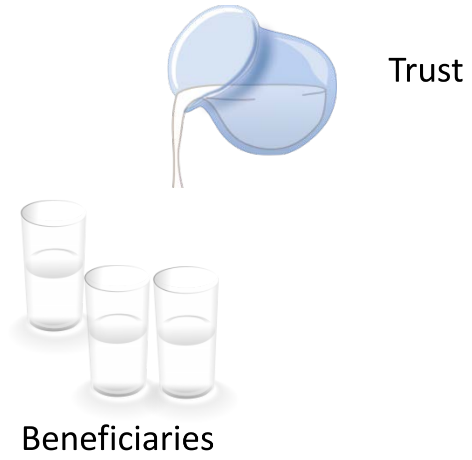
Foundational Concepts

Typical Types of “Principal” Under Traditional Fiduciary Accounting

- A portion of IRAs and/or RMDs (varies by state law)
- Increases in asset value (i.e. growth)
- Realized long-term capital gain
- Realized short-term capital gain

Foundational Concepts
Distributable Net Income (DNI)

- Determines the amount of the trust’s or estate’s income distribution deduction.
- Determines how much the beneficiaries must report as income on their tax returns.
- Determines the character (e.g. interest, dividends, IRAs etc.) of the taxable income in beneficiaries’ hands.



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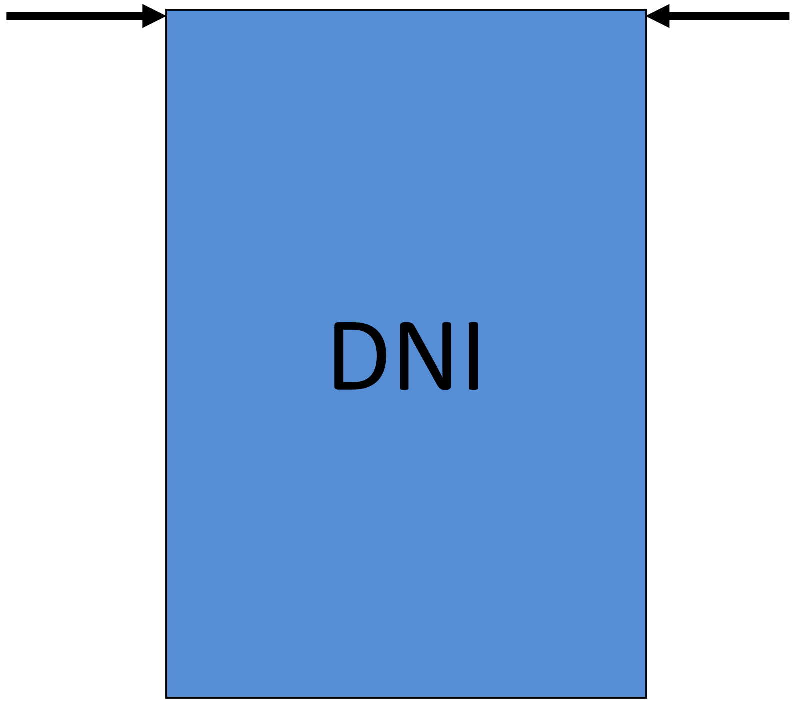
Foundational Concepts
Distributable Net Income (DNI)

<u>Trust/Estate</u>
DNI acts as a ceiling for purposes of the allowable deduction



<u>Beneficiary</u>
DNI acts as a ceiling for the total amount of income the beneficiary must report on his/her tax return

Foundational Concepts

Distributable Net Income (DNI)

Example

Assume that a complex trust had the following sources of income and deductions during the current tax year:

Interest income	$ 1,000
Dividend income	1,000
IRA distributions	48,000
Attorney/accountant fees	500

Foundational Concepts

Distributable Net Income (DNI)

Example (cont.)

Interest income	$	1,000
Dividend income		1,000
IRA Distributions		48,000
Total Income	**$**	**50,000**
Less: Attorney/accountant fees		(500)
Adjusted Gross Income (AGI)	**$**	**49,500**
Less: Exemption		(100)
Taxable Income	**$**	**49,400**

Taxable Income	$	49,400
Add-In: Exemption		100
Distributable Net Income (DNI)	**$**	**49,500**

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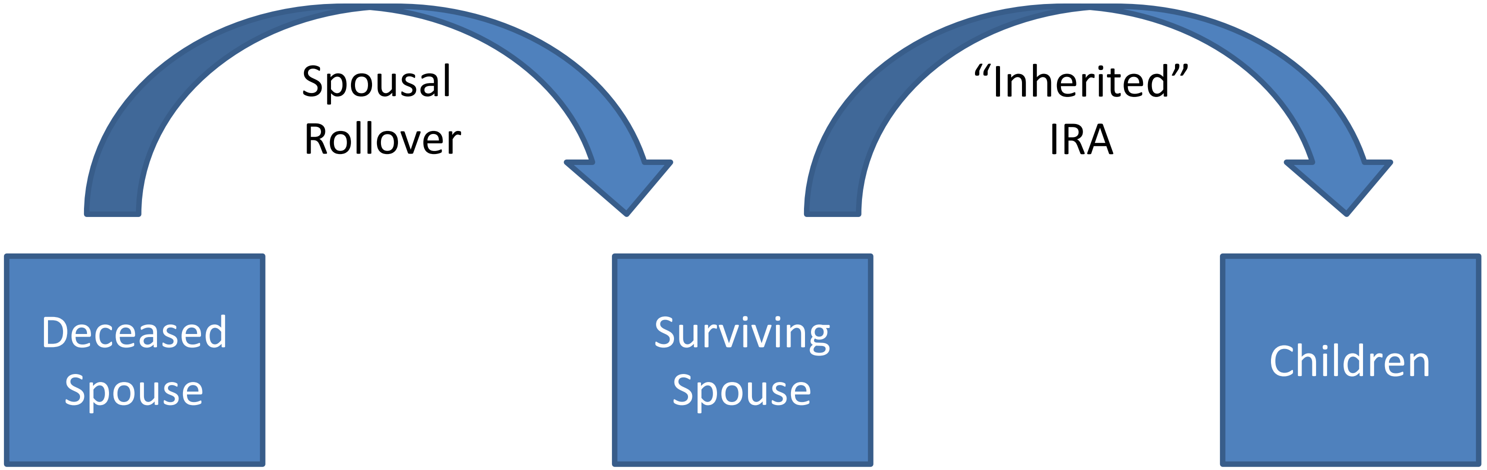
THE NEW SPOUSAL ROLLOVER TRAP

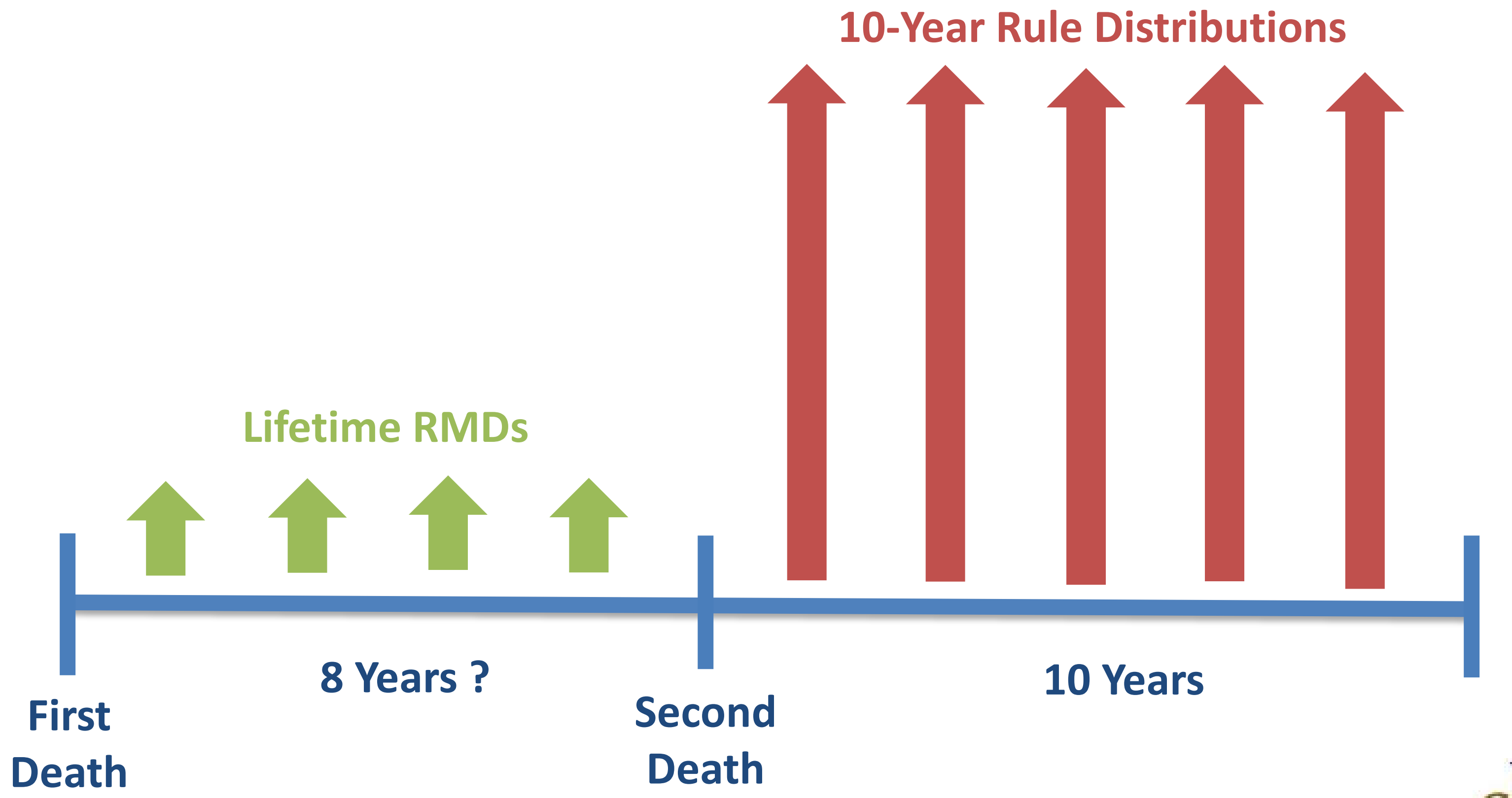
Old Best Practice



IRC § 408

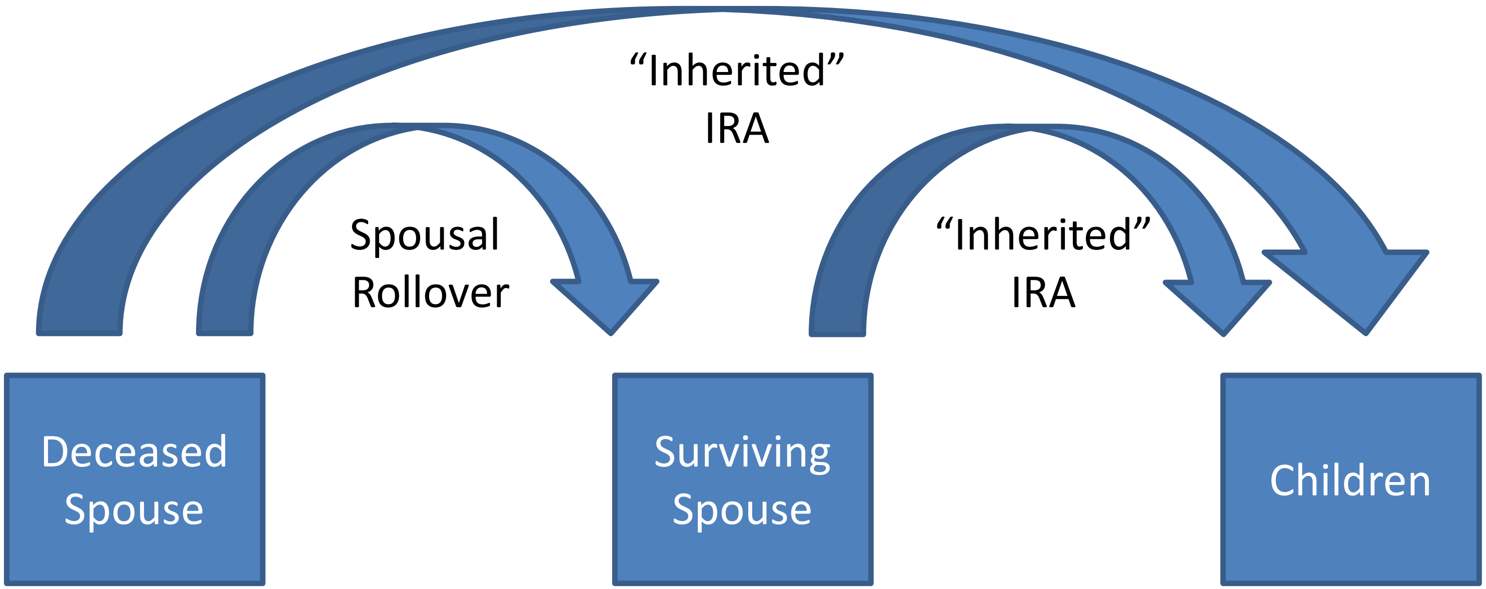
THE NEW SPOUSAL ROLLOVER TRAP

Old Best Practice &
the New Spousal Rollover Trap



THE NEW SPOUSAL ROLLOVER TRAP

Potential New Best Practice



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THE NEW SPOUSAL ROLLOVER TRAP

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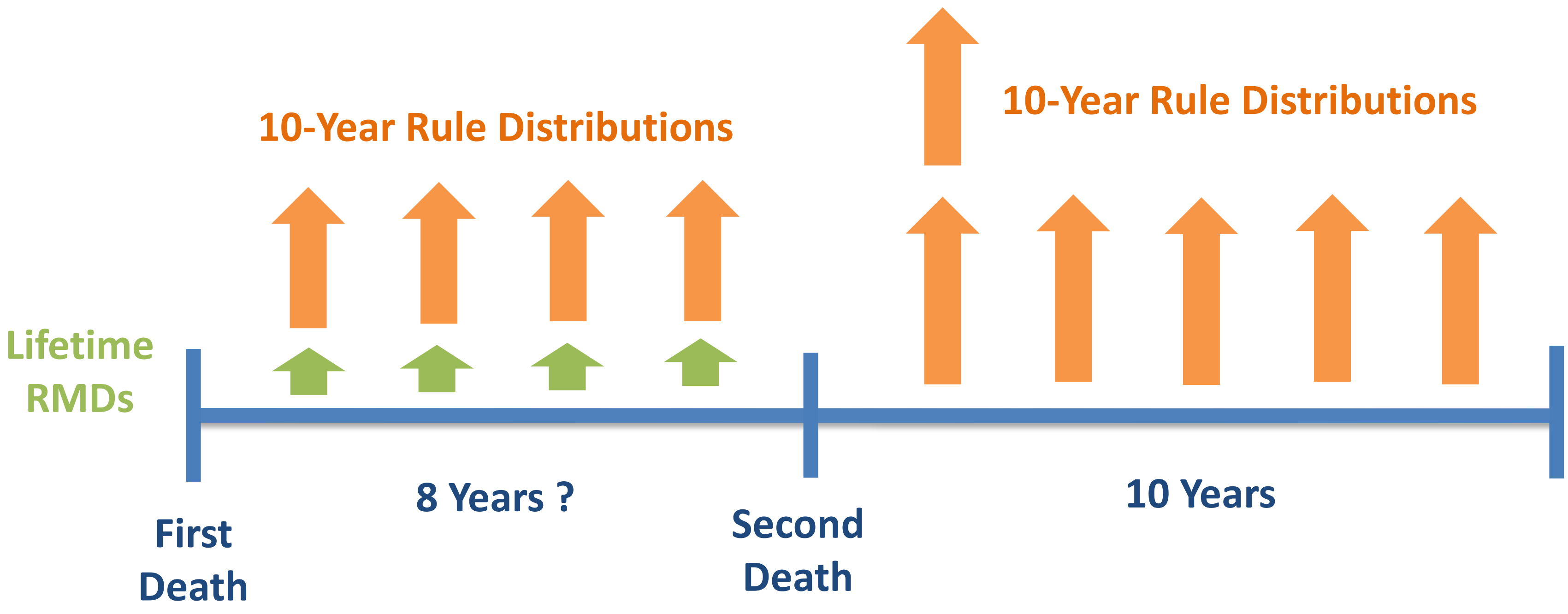
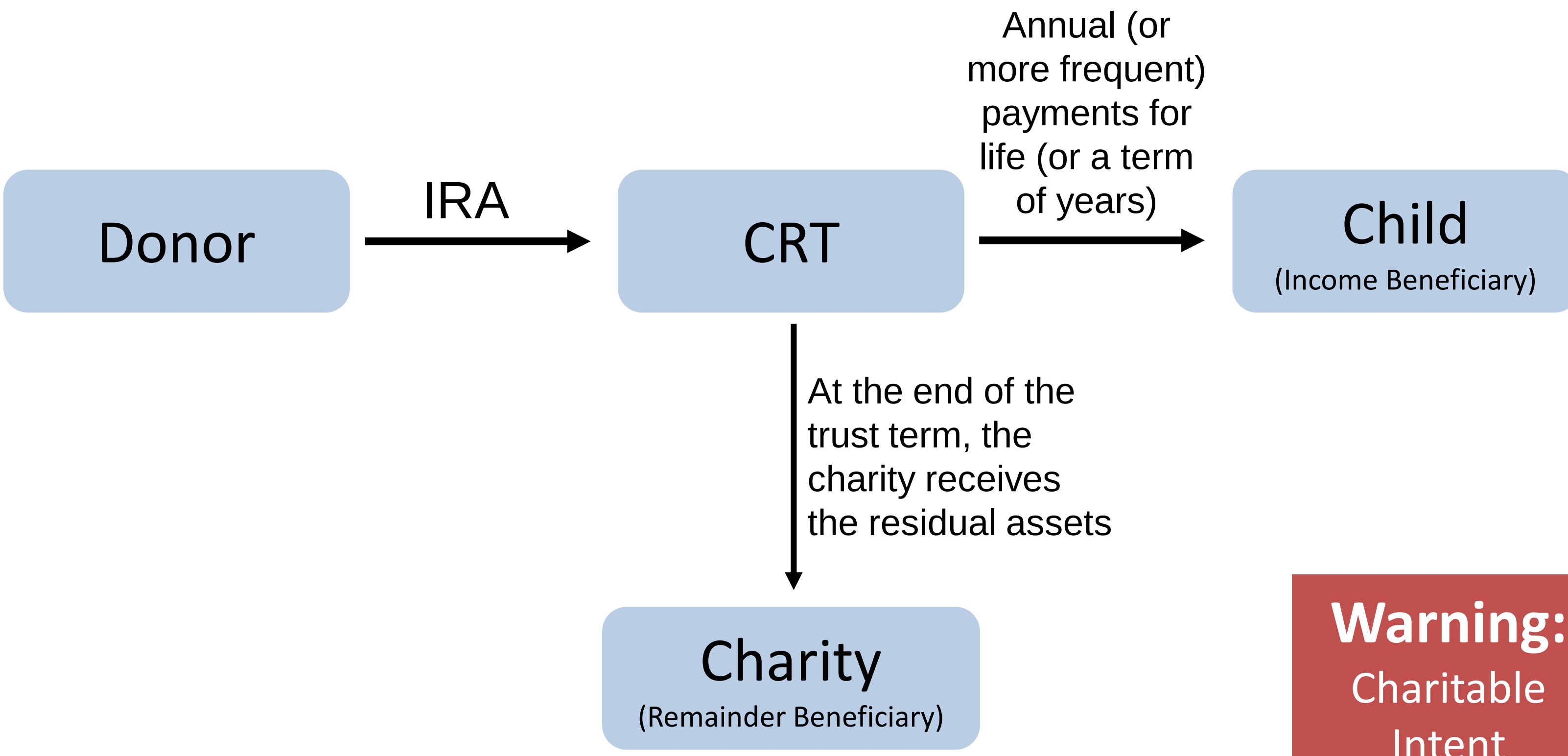


Charitable Remainder Trusts

Overview



Warning:
Charitable Intent Required

Charitable Remainder Trusts

Types of CRTs

- Charitable Remainder Annuity Trust (CRAT)
  - The beneficiaries receive a fixed percentage of the initial trust value or a stated amount annually or more frequently.
  - The amount paid doesn't change from year to year.
  - The annual payment must be 5-50% of the fair market value of the assets at the time of contribution.
  - The term of the annuity can be:
    - For a term up to 20 years,
    - Over the life of the annuitant(s),
    - Over the shorter of the two, or
    - Over the longer of the two.
  - Run the Exhaustion Test
  - 10% Charitable Remainder Test

Warning:
A CRAT generally requires a greater Charitable Intent because of the exhaustion Test

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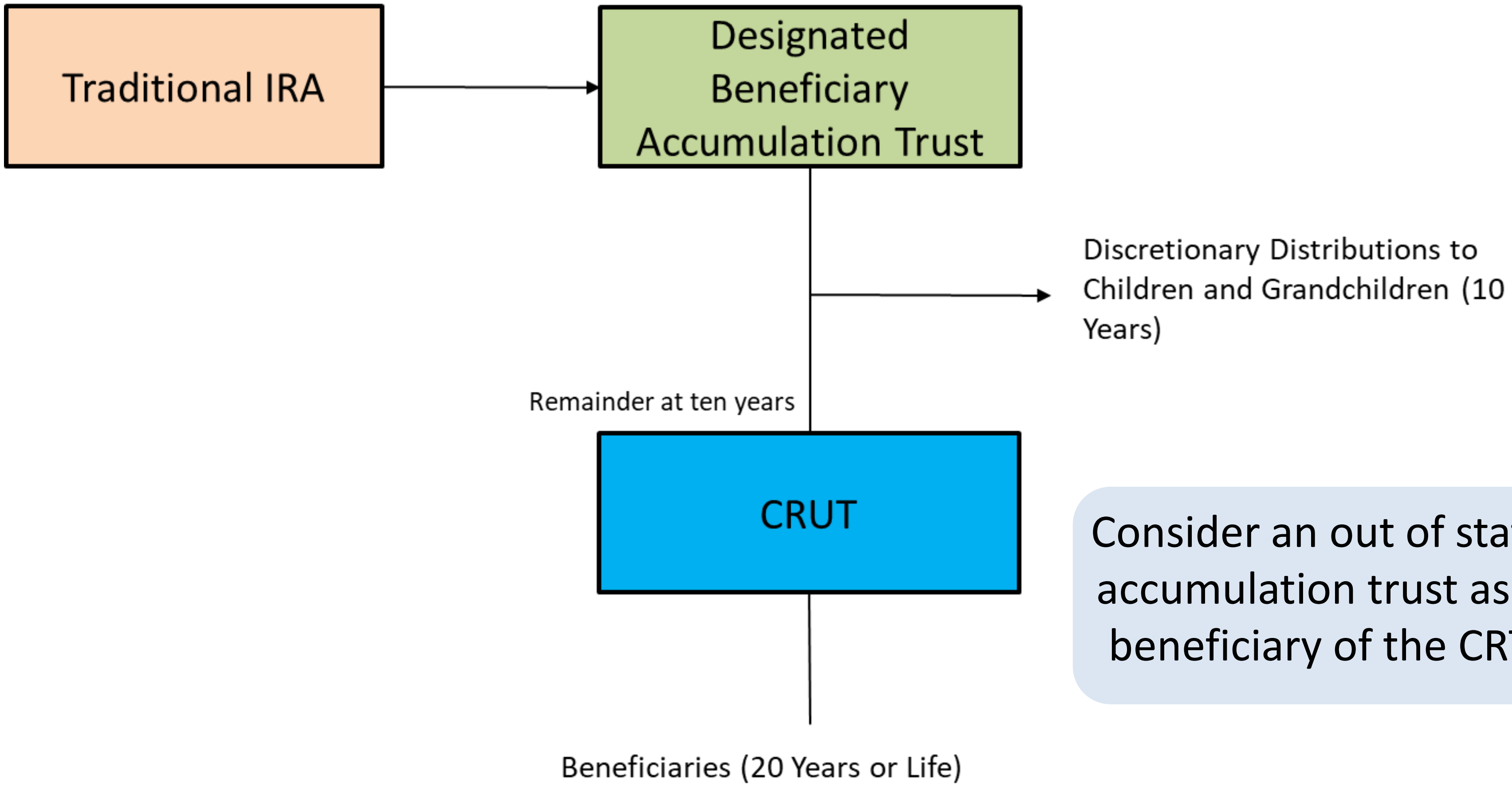
Charitable Remainder Trusts

Types of CRTs

- Charitable Remainder Unitrust (CRUT)
  - Income beneficiaries receive a stated percentage of the trust's assets revalued each year.
    - The distribution will vary from year-to-year depending on the investment performance of the trust assets and the amount withdrawn.
- 10% Charitable Remainder Test
- Life or term-of-years

Charitable Remainder Trust

Accumulation Trust – CRUT Combination



Consider an out of state accumulation trust as a beneficiary of the CRT

Charitable Remainder Trusts

Taxation of Distributions

- The character of income received by the recipient is subject to and controlled by the tier rules of IRC §664(b):
  - First, distributions are taxed as ordinary income
  - **Second, distributions are taxed as capital gains**
  - Third, distributions are taxed as tax-exempt income (e.g. municipal bond income)
  - Finally, distributions are assumed to be the non-taxable return of principal

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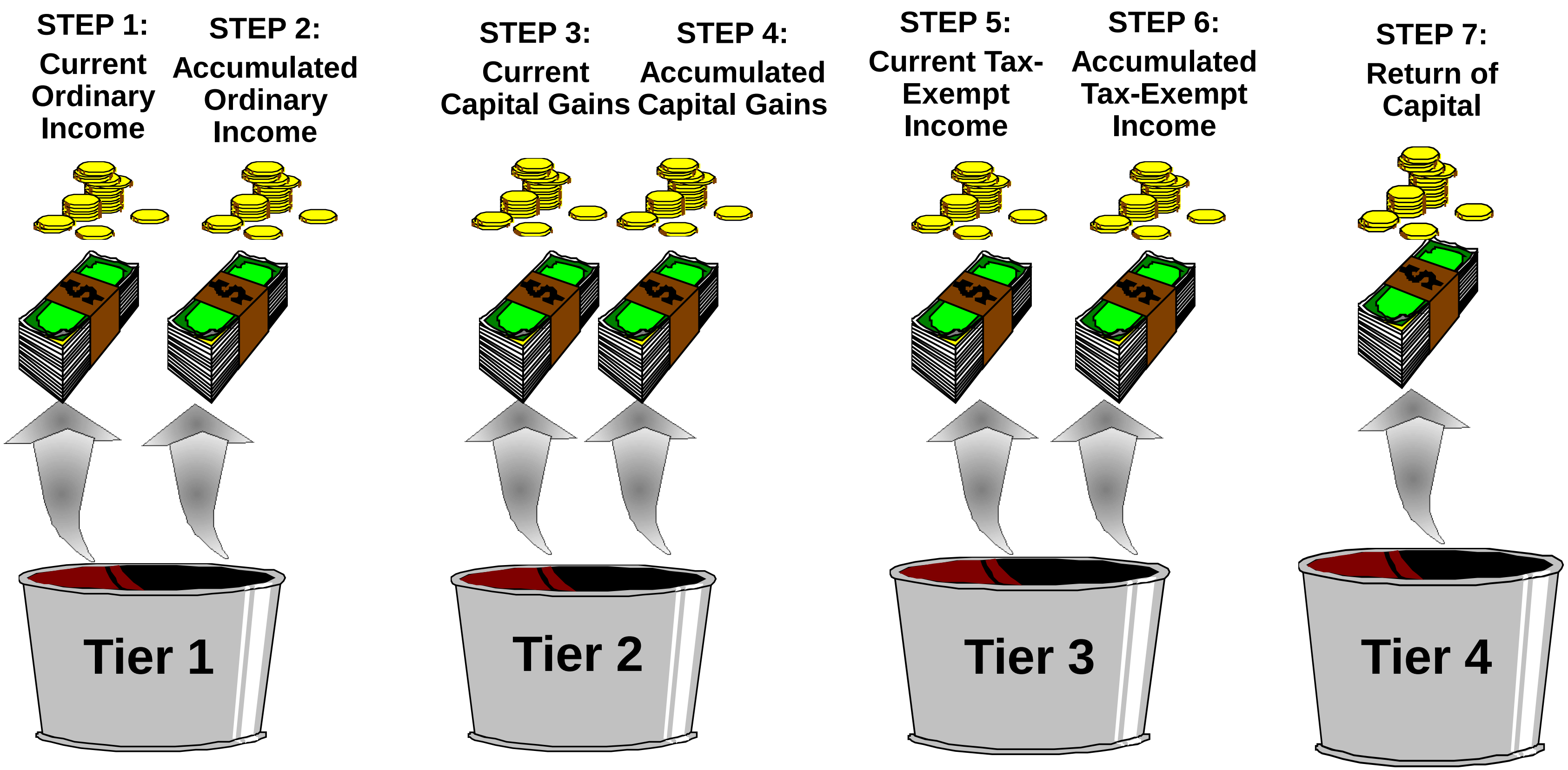
Charitable Remainder Trusts

Taxation of Distributions



Charitable Remainder Trusts

Taxation of Distributions

- Traditional IRA Distributions are Tier I Income
- Interest Earned on post-distribution investment portfolio is Tier I Income
- Qualified Dividends earned on post-distribution investment portfolio is Tier II Income
- Long-Term Capital Gains earned on post distribution portfolio is Tier II Income
- IRA Basis is Tier IV return of capital

Charitable Remainder Trusts

Example

- Assumptions
  - 50-year old beneficiary
  - 6% rate of return: 2% yield, 4% growth
  - 10% turnover rate
  - Tax rates: 37% on immediate distribution; 32% 5-year distribution; 24% 10-year distribution; 22% lifetime distribution & all CRT models
  - May 2019 interest rates

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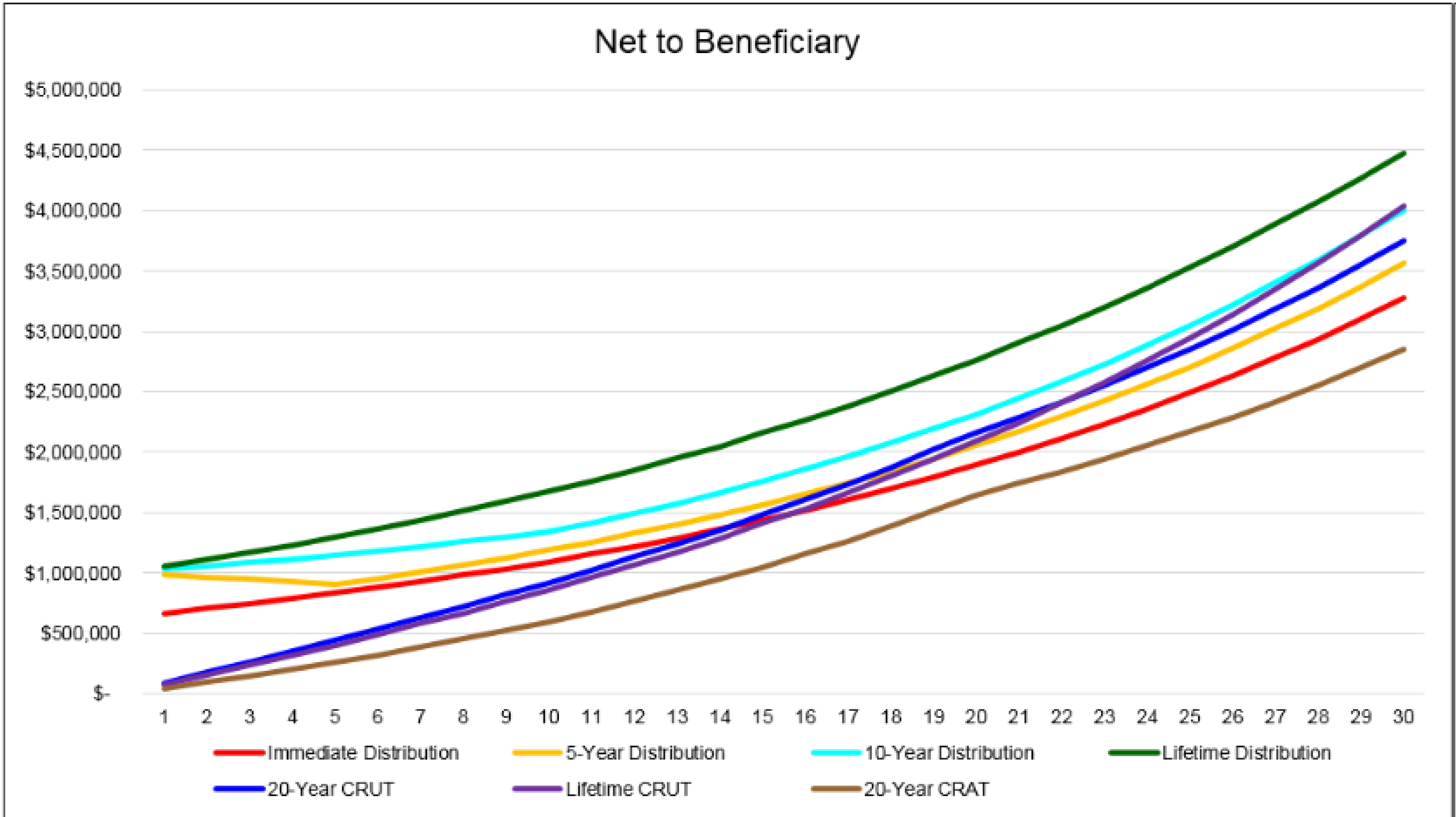
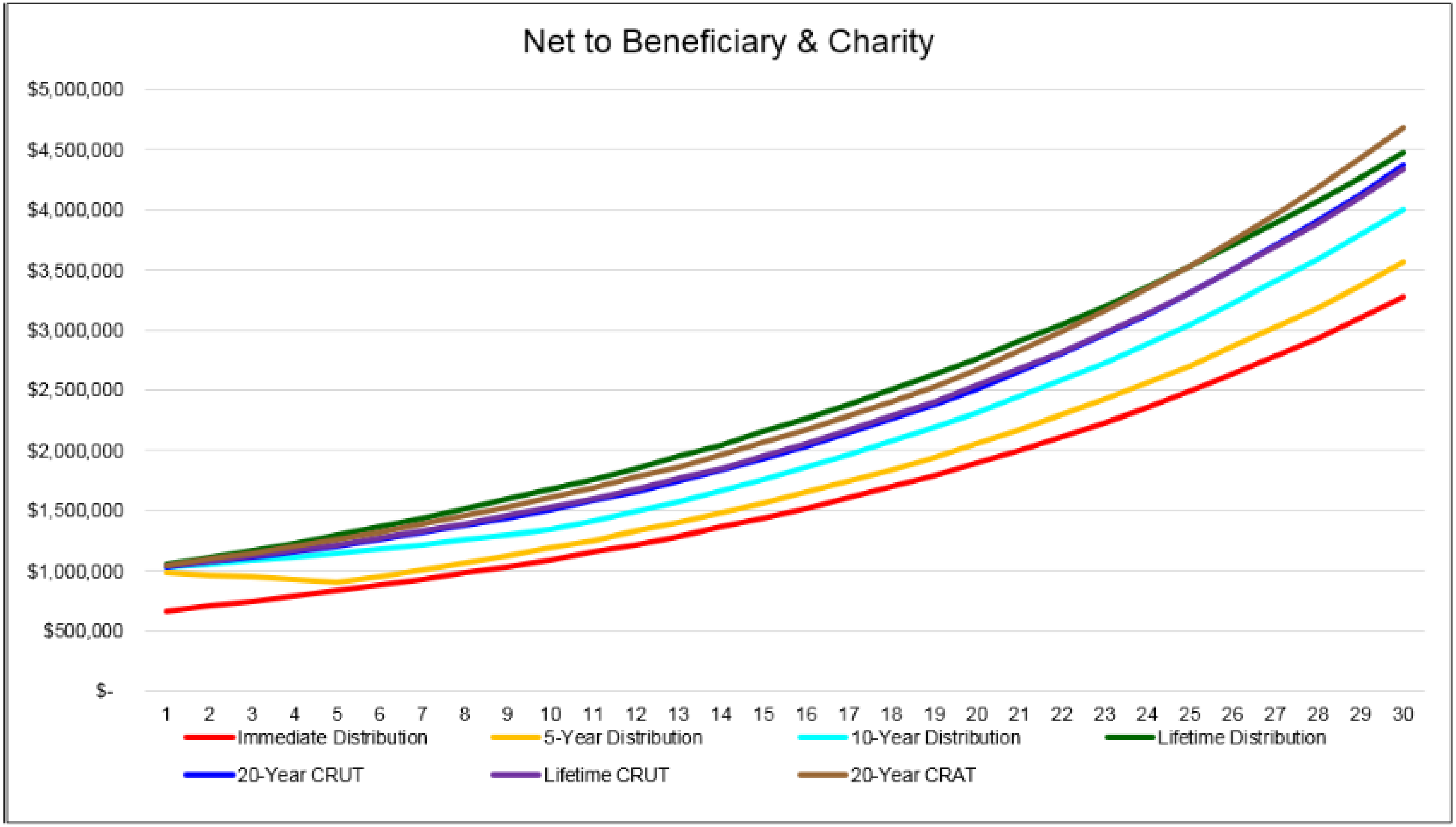
Charitable Remainder Trusts

Example



Charitable Remainder Trusts

Example



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State Income Tax Planning

- Review State Law of the IRA Owner
  - Will the home state tax the out of state IRA Trust?
  - Does the home state have a throwback rule?
  - California throwback taxable income equals cash received
- Design a beneficiary form to be payable to non-grantor trust in states with no income tax
- The payments “trapped” in the trust will avoid state income taxes (watch out for throwback)

IRA → Nevada Designated Beneficiary IRA Trust → Beneficiary

State Income Tax Planning

5th Annual Non-Grantor Trust State Income Tax Chart - Page 1 of 2			
State (alphabetical)	Taxing Statute	Top 2019 Tax Rate	Under What Conditions does the State Tax a Non-Grantor Trust?
Alabama	Ala. §§40-18-1(33)	5.00%	If the trust is set up by the Will of an AL resident or settlor was an AL resident at time trust became irrevocable, and an AL resident is a beneficiary or trustee for more than seven months during the tax year
Alaska	***No tax***	0%	***No tax***
Arizona	Ariz. Rev. Stat. §43-1301(5)	4.54%	If there is at least one AZ trustee
Arkansas	Ark. Code Ann. §§26-51-201(a)-(c)	6.90%	If the trust is set up by the Will of an AR resident or settlor was an AR resident, and there is an AR trustee
California	Cal. Rev. & Tax. Code §17742	13.30%	If the trust has either a CA trustee or a CA non-contingent beneficiary, tax apportioned based on CA vs. non-CA trustees and CA non-contingent beneficiaries vs. CA contingent beneficiaries and non-CA beneficiaries
Colorado	Colo. Rev. Stat. §39-22-103(10)	4.63%	If the trust is administered in CO
Connecticut	Conn. Gen. Stat. §12-701(a)(4)(C)-(D), (a)(5), (a)(6)	6.99%	If the trust is set up by the Will of a CT resident or settlor was a CT resident at time property transferred to an irrevocable trust or at the time property transferred to revocable trust that later became irrevocable --- other than for Will transfer, tax is modified fractionally to the extent there are nonresident non-contingent beneficiaries
Delaware	30 Del. C. §1601(8)-(9); 30 Del. C. §1636	6.60%	If the trust is set up by the Will of a DE resident, or settlor of trust was a DE resident, or the majority of the trustees are DE residents for more than ½ the year; in all of such cases only if there is a DE beneficiary
Florida	***No tax***	0%	***No tax***
Georgia	O.C.G.A. §48-7-22	5.75%	If there is trust property located in GA or if the trustee is "managing funds for the benefit of a resident of" GA (but Sup. Ct. of U.S. says statute is unconstitutional to tax just because of resident beneficiary per *Kaestner*)
Hawaii	Haw. Rev. Stat. §§235-1; Form N-40 Instr.	11.00%	If there is a HI trustee or if the trust is administered in HI, but only if there's a Hawaii beneficiary
Idaho	Idaho Rev. and Tax. §63-3015(2)	6.93%	If there are three or more of: (1) Grantor is ID resident; (2) Trust governed by ID law; (3) Trust has real or tangible personal property located in ID; (4) Trust has ID trustee; and/or (5) Administration of trust in ID

https://www.oshins.com/state-rankings-charts

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Illinois	35 Ill. Comp. Stat.5/1501(a)(20)(C)-(D)	4.95%*	If the trust is set up by the Will of an IL resident or settlor was an IL resident at time trust became irrevocable --- *Note that there is also a 1.50% "replacement tax" assessed in addition to the regular state income tax
Indiana	Ind. Admin. Code tit.45, r. 3.1-1-12	3.23%	If the trust is administered in IN
Iowa	Iowa Admin. Code r. 701-89.3(1)-(2)	8.53%	Depends on "relevant facts of each case" --- Relevant facts include residence of trustees, location of administration, location of evidence of intangible assets of the trust, etc. --- Must read rules carefully
Kansas	Kan. Stat. Ann. §§79-32, 109(d)	4.60%	If the trust is administered in KS
Kentucky	Ky. Rev. Stat. Ann. §386B.1-060; Instr. to Form 741	5.00%	If the principal place of administration of the trust is in KY
Louisiana	La. Rev. Stat. Ann.§47:300.10(3)	6.00%	If the trust is set up by the Will of a LA resident; or an inter vivos trust set up by resident of any jurisdiction if trust instrument provides that the trust shall be governed by LA law, or if silent then taxed if administered in LA
Maine	Me. Rev. Stat. Ann. Tit. 36, §5102(4)(B)-(C)	7.15%	If the trust is set up by the Will of a ME resident or settlor was a ME resident
Maryland	Md. Code Ann., Tax-Gen. §§10-101(k)(1)(iii)	5.75%	If the trust is set up by the Will of a MD resident or settlor "is a current resident of" MD or the trust is principally administered in MD --- Also note the 1.25% to 3.20% county tax
Massachusetts	Mass Regs. Code tit. 830, §62.10(c); Form 2 Instr.	5.10%	If the trust is set up by the Will of a MA resident and there is MA beneficiary; Or if settlor was a MA resident at time of creation of inter vivos trust or at any time during year in which income is computed or who died as MA resident and there is MA beneficiary, but only if MA trustee --- Also note the 12.00% tax for short-term capital gains and gains for sales of collectibles (with 50% income tax deduction for collectibles)
Michigan	Mich. Comp. Laws §206.18(1)(c); Form MI-1041	4.25%	If the trust is set up by the Will of a MI resident; or settlor was a MI resident at time trust became irrevocable
Minnesota	Minn. Stat. §290.01, Subd. 7b	9.85%	If the trust is set up by the Will of a MN resident that died post-12/31/1995 or trust that became irrevocable post-12/31/1995; or for pre-1/1/1996 irrevocable trusts if the majority of discretionary investment distribution decisions are made in MN or the books or records located in MN
Mississippi	Miss. Code Ann. §27-7-5(1); Miss. Form 81-110 Instructions	5.00%	If the trust is administered in MS
Missouri	RSMo §143.331(2)-(3)	5.40%	If the trust is set up by the Will of a MO resident or settlor was a MO resident at time trust became irrevocable, and a MO resident is a beneficiary on the last day of the tax year
Montana	MT Code §72-38-103(14); Fiduciary Tax Return	6.90%	If principal place of administration is in MT --- Principal place of administration is the usual place where day-to-day activities carried on by the trustee which is generally trustee's residence or usual place of business

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Nebraska	877-2714.01(6)(b)-(c)	6.84%	If the trust is set up by the Will of a NE resident; or if settlor of inter vivos trust was a NE resident at time such person may no longer exercise the power to revest title to the trust property in himself or herself
Nevada	***No tax***	0%	***No tax***
New Hampshire	***No tax***	0%	***No tax***
New Jersey	NJSA §54A:1-2(o)-(p); Form NJ-1041	10.75%	If the trust is set up by Will of NJ resident or if settlor of a trust was a NJ resident at time of transfer to irrev. trust or at time a rev. trust became irrevocable, but not if no NJ assets, no NJ source income and no NJ resident trustee
New Mexico	NM Stat. Ann. §§7-2-2(I), (S); NM Tax. & Rev. Dept.	4.90%	If the trustee is a NM resident; or if the principal place from which the trust is managed or administered is in NM
New York	N.Y. Tax Law §605(b)(3)-(4)	8.82%	If the trust is set up by the Will of a NY resident or settlor was a NY resident at time trust became irrevocable or when transfer made to trust, but foregoing doesn't apply if no NY trustees, all corpus outside of NY and all income non-NY sourced; Also, no Incomplete Gift Non-grantor Trusts
New York City	N.Y. Tax Law §1305	3.876%	If the trust is set up by the Will of a NY City resident or settlor was a NY City resident at time trust became irrevocable or when transfer made to trust, but foregoing doesn't apply if no NY City trustees, all corpus outside of NY City and all income non-NY City sourced; Also, no Incomplete Gift Non-grantor Trusts
North Carolina	N.C. Gen. Stat. §105-160.2	5.25%	If there is a NC beneficiary (but Sup. Ct. of U.S. says statute is unconstitutional per *Kaestner*)
North Dakota	N.D. Admin. Code §81-03-02.1-04(2)	3.22%	If the trust "has a relationship to the state sufficient to create nexus" --- This includes, but is not limited to: (1) If there is a ND beneficiary; (2) If there is a ND trustee; (3) If there are ND situs assets; (4) If there is administration in ND; and/or (5) If the "laws of this state are made applicable to the trust"
Ohio	Ohio Rev. Code Ann. §5747.01(I)(3)	4.997%	If the trust is set up by the Will of OH resident; or if settlor of an inter vivos trust was an OH resident at time trust became irrev. and at least one of "qualifying beneficiaries" is OH resident during all or some portion of taxable yr.
Oklahoma	Okla. Stat. tit. 68 §2353.6	5.25%	If the trust is set up by the Will of an OK resident; or settlor of inter vivos trust was an OK resident at time such trust irrevocable; or when person may no longer exercise the power to revest title to the trust property in himself
Oregon	Or. Rev. Stat. Ann. §316.282(1)(d)	9.90%	If there is an OR trustee; or if the trust is administered in OR
Pennsylvania	72 P.S., tit. 61, Sec. 101.1	3.07%	If the trust is set up by the Will of a PA resident; or if settlor of inter vivos trust was a PA resident at time of creation of trust or at time of transfer to trust

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Rhode Island	R.I. Gen. Laws §44-30-5(c)(2)-(5)	5.99%	If the trust is set up by the Will of a RI resident; or a RI settlor of a revocable trust upon becoming irrevocable; or a settlor of an irrevocable trust if the settlor was a RI resident at time of creation of trust or at time of transfer to trust, but in each of these situations only to the extent that the beneficiaries are RI residents
South Carolina	S.C. Code Ann. §12-6-30(5)	7.00%	If the trust is administered in SC
South Dakota	***No tax***	0%	***No tax***
Tennessee	Tenn. Code Ann. §67-2-110(a)	2.00% (int./div. only)	If there is a TN beneficiary (but Sup. Ct. of U.S. says statute is unconstitutional per *Kaestner*)
Texas	***No tax***	0%	***No tax***
Utah	Utah Code Ann. §75-7-103(1)(i)(ii)-(iii)	4.95%	If the trust is set up by the Will of a UT resident; or if a trust is administered in UT
Vermont	32 V.S.A. §5811(11)(B)	8.75%	If the trust is set up by the Will of a VT resident; or if settlor of a trust was a VT resident at time of transfer to irrevocable trust or was a VT resident at the time a revocable trust became irrevocable
Virginia	Va. Code Ann. §58.1-302	5.75%	If the trust is set up by the Will of a VA resident; or if a trust was created by a settlor who was a VA resident; or a trust which is being administered in VA
Washington	***No tax***	0%	***No tax***
Washington, D.C.	D.C. Code §47-1809.01, 1809.02	8.95%	If the trust is set up by the Will of a D.C. resident; or if a trust was created by a settlor who was a D.C. resident
West Virginia	W. VA. Code §11-21-7(c)	6.50%	If the trust is set up by the Will of a WV resident; or if a trust was created by a settlor who was a WV resident
Wisconsin	Wis. Stat. §71.14(2), (3), (3m)	7.65%	If the trust is set up by the Will of a WI resident; or if settlor of a post-10/28/1999 inter vivos trust was a WI resident at time trust became irrevocable; or if irrevocable inter vivos trust administered in WI pre-10/29/1999
Wyoming	***No tax***	0%	***No tax***

*This Non-Grantor Trust State Income Tax Chart created in June 2019. For informational purposes only. Do not rely solely on the short summary. Always read the statute.

Steve Oshins is a member of the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. He was inducted into the NAEPC Estate Planning Hall of Fame® in 2011. He was named one of the 24 "Elite Estate Planning Attorneys" and the "Top Estate Planning Attorney of 2018" by *The Wealth Advisor* and one of the Top 100 Attorneys in *Worth*. He is listed in *The Best Lawyers in America®* which also named him Las Vegas Trusts and Estates/Tax Law Lawyer of the Year in 2012, 2015, 2016 and 2018. He can be reached at 702-341-6000, ext. 2 or soshins@oshins.com. His law firm's website is www.oshins.com.

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Life Insurance

- Four Strategies
  - Offset tax-risk of early death
  - IRA Relocation
  - Roth Conversion Hedge
  - Liquidity for a post-mortem Roth Conversion

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Life Insurance

- The 10-year rule, creates new actuarial risk of early death:
  - Under prior law, qualified accounts were drawn-down over decades after death capturing deferral and virtually assuring bracket arbitrage.
  - However, a 10-year distribution requirement will unfairly tax those who die when their savings peak around retirement age or shortly thereafter.
  - Life insurance could however offset this risk that family wealth will be lost to tax.

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Life Insurance – Roth Hedge

It's a Balancing Act …
Bet to Live? Bet to Die?

Life Insurance – Roth Hedge

- Roth conversions will be the primary way in which those with large IRAs avoid exposure to higher income tax rates after death.
  - However, the effectiveness of this strategy increases with time.
  - A life insurance policy equal to the difference between the theoretical terminal tax and the terminal tax in the event of early death would offset this risk.

Life Insurance – Roth Hedge

- Example:
  – Mary is a 60-year old divorcee and has $2,000,000 in her qualified plans.
  – Mary's accountant projects her retirement tax-rate to be no greater than 24% with opportunities to undertake Roth Conversions.

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Life Insurance – Roth Hedge

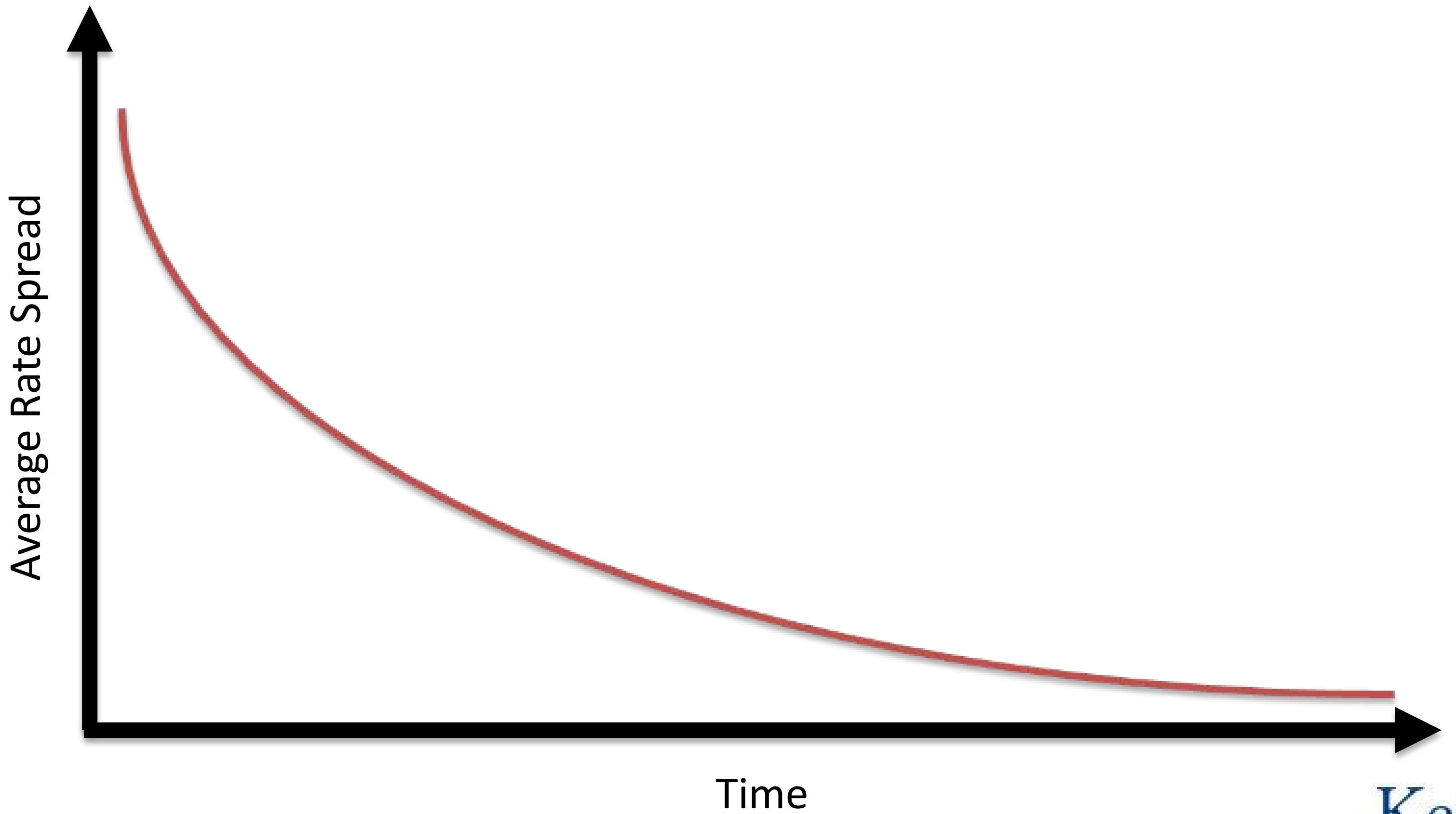
- Example (cont.):
  - With the stretch, RMDs to her only child would generally be subject to a 22%-24% rate.
  - However, with a 10-year rule about 50% of amortized distributions would be subject to a 32% rate.
  - Mary’s simple tax-risk of early death is about $80,000 [$2,000,000 x 50% x (32% - 24%)]

Life Insurance – Roth Hedge

- Example (cont.):
  - A more complex calculation could also consider the value of the loss of the qualified accounts:
    - Terminal Tax Deferral
    - Tax-free Compounding of Yield
    - No Roth RMDs During Life
    - Post-mortem Roth Earnings

Life Insurance – Roth Hedge

- Note that the tax-cost of early death will decrease with age for many people



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Life Insurance – Roth Hedge

- Therefore, a policy structure with a declining death benefit would best offset the risk
- A whole or universal life product with a term rider may therefore be the best fit

Life Insurance – Relocation

- The basic theory is that Roth Conversions will generally produce the same tax deferral result as a permanent life insurance policy.
- Therefore, using IRA distributions to fund premium payments can sometimes make sense.
  - Often works for those with excessive RMDs and high tax rates (basic minimal funding until RMDs begin possible)
  - Often works for those who may be subject to an estate tax
  - Can work in other situations

Life Insurance – Relocation

The mathematical theory is similar to a Roth conversion

	Traditional IRA	Roth IRA	Life Insurance
Current Account Balance	$ 1,000,000	$ 1,000,000	$ 1,000,000
Less: Income Taxes @ 40%	-	(400,000)	(400,000)
Net Balance	**$ 1,000,000**	**$ 600,000**	**$ 600,000**
Growth Until Death	300.00%	300.00%	300.00%
Account Balance @ Death	$ 3,000,000	$ 1,800,000	$ 1,800,000
Less: Income Taxes @ 40%	(1,200,000)	-	-
Net Account Balance to Family	**$ 1,800,000**	**$ 1,800,000**	**$ 1,800,000**

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Post-Mortem Roth Conversions

- Insurance could provide the liquidity for post-mortem Roth conversions
- The surviving spouse could undertake the conversion after a spousal rollover
- Post-mortem Roth conversions are also possible for 401k accounts

Charitable Planning with IRAs

Basic Overview

- Available Options to Transfer IRD Assets to Charity
  - **Name a Charity as the Beneficiary of the IRA**
  - Specific Bequest of IRD Assets to Charity under a Will
  - Power of Executor to make a non-pro rata Distribution to Residuary Beneficiaries
  - Assignment of IRD to charity to satisfy a Pecuniary Bequest
  - Recognition of income with § 642(c) Charitable Deduction
  - **Recognition of income without § 642(c) Charitable Deduction**

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Charitable Planning with IRAs

Basic Overview

§ 642(c)(1) General rule

In the case of an estate or trust, there shall be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, paid for a purpose specified in section 170(c)

Charitable Planning with IRAs

Basic Overview

§ 642(c)(2) Amounts permanently set aside

There shall also be allowed as a deduction in computing its taxable income any amount of the gross income, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

*Applies only to estates – not to trusts funded later than 1969

See the remainder of the statute for details.

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