NEW RULES FOR RETIREMENT ASSETS
IMPACT OF THE SECURE ACT

I. WHAT'S GOING ON THESE DAYS REGARDING GIFT AND DEATH TAX?

A. First, Let's Talk About Tennessee:

(1) Tennessee's *gift tax* was repealed effective January 1, 2012, and our *inheritance tax* was repealed for all residents who died in 2016 or after.

(2) Tennessee's *Hall Income Tax* is being phased out; this year, the rate of TN tax on passive income sources is 1%, and after 2020 we will be an income-tax-free state.

B. So, What About the Feds?

(1) Here are the **federal estate tax-free amounts** in effect from and after **June 7th, 2001:**

1977 -	$120,000	**1986** -	$500,000
1978 -	134,000	**1987 - 1997:**	600,000
1979 -	147,000	**1998 -**	625,000
1980 -	161,000	**1999** -	650,000
1981 -	175,000	**2000 - 2001:**	675,000
1982 -	225,000	**2002 - 2003:**	1,000,000
1983 -	275,000	**2004 - 2005:**	1,500,000
1984 -	325,000	**2006 - 2008:**	2,000,000
1985 -	400,000	**2009** -	3,500,000

2010 - **$5 Million; unless an election is made for the tax-free amount to be UNLIMITED (but with carry-over basis)**
2011 - $5,000,000 with a 35% rate on the excess
2012 - $5,120,000 with a 35% rate on the excess
2013 - $5,250,000 with a 40% rate on the excess
2014 - $5,340,000 with a 40% rate on the excess
2015 - $5,430,000 with a 40% rate on the excess
2016 - $5,450,000 with a 40% rate on the excess
2017 - $5,490,000 with a 40% rate on the excess
2018 - $11,180,000 with a 40% rate on the excess
2019 - $11,400,000 with a 40% rate on the excess
2020 - $11,580,000 with a 40% rate on the excess

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Unless Congress takes action to the contrary, this high tax-free amount will "sunset" (expire) at the end of 2025, and the tax-free amount will automatically drop to approximately $6 million per person in 2026 (indexed for inflation from 2011 onward). During the most recent presidential campaign, the ***lowest*** *estate tax-free amount advocated by a major candidate was $3.5 million, with a maximum tax rate of 65% on the excess. Bernie Sanders' position is tax-free $3.5 million, then 45% on the estate up to $10 million; from $10 to $50 million, he proposes 50%; from $50 million to $1 billion, 55%; and over $1 billion, 77% estate tax.*

(2) The **federal gift tax-free amount** for all **taxable gifts** is a **cumulative** lifetime total of **$11,580,000 per donor;** each donor has a **$15,000 per person annual gift tax exclusion** (indexed for inflation).

(3) The **unlimited marital deduction** for certain types of gifts to a spouse during lifetime and at death and the **unlimited charitable deduction** for certain types of gifts to charitable organizations **are both still applicable for gift and death tax purposes.**

(4) The **exemption from the generation-skipping transfer (GST) tax is $11,580,000 as well.**

(5) **The rate of federal estate, gift and GST tax is 40%.**

B. Portability has now become a mandatory issue to discuss with married clients.

(1) The amount a married couple can pass on tax-free is, under Code Section 2010(c): (1) the "applicable exclusion amount" ($11.58 million in 2020); plus (2) for a decedent who is a surviving spouse, the "Deceased Spousal Unused Exclusion Amount" or **DSUEA**.

(2) **What is the DSUEA?** The amount of the deceased spousal unused exclusion is the lesser of the applicable exclusion amount ($11.58 as indexed) or the last predeceased spouse's unused exclusion amount.

(3) **No statute of limitations:** Under **Code Section 2010(c)(5)(B)**, the IRS is entitled to examine the predeceased spouse's estate tax return at any time for the purpose of determining the predeceased spouse's unused exclusion amount that will be available for use by the surviving spouse.

(4) **The first-death filing requirement:** In order to qualify for a DSUEA amount, the executor of the estate of the first spouse to die must timely file a federal estate tax return and make an election to use portability.

(5) **Only the most recently-wed spouse's DSUEA can be used:** This will be the case even if the last deceased spouse either had no unused

exclusion, or did not make a timely election (in which case the DSUEA would be zero).

(6) **The privity requirement:** A surviving spouse cannot use the DSUEA of his or her deceased spouse if the survivor remarries. For example, if Barnie dies leaving $3 million to his children, and the rest was jointly owned with his surviving wife Mabel, who elects and claims Barnie's unused $8.58 million ($11.58 million minus $3 million) DSUEA, then Mabel would herself have $8.58 plus $11.58 million that she could theoretically leave tax-free upon her death. But if Mabel later marries Frank and Frank then dies, leaving his entire $11.58+ million to his children, the maximum amount that Mabel can leave tax-free is back down to $11.58 million, *not* the $20.16 million she had going into her remarriage. [Remember that the overall tax-exempt amount could go down to $3.5 million or even lower in the future, making the value of portability and the potential penalty of remarriage much greater.]

(7) **Portability applies for gift tax purposes, too: Code Section 2505(a)(1)** provides that the applicable credit amount includes the DSUEA, so that amount will also be included in the calculation of the gift tax exemption amount. This means that if the widow decides to marry the millionaire next door, she should consider using her DSUEA with gifts to her kids *before* the wedding day, so that she does not lose it if her new husband predeceases her. (This is a good idea anyway in case the basic exclusion amount goes down.)

(8) **Portability does not apply for GST tax purposes:** This (among other reasons) is why it's still a good idea to divide up a wealthy couple's assets in estate planning if they want to take advantage of a generation-skipping design.

(9) **Portability has been made "permanent" and will not sunset on its own without Congressional action to remove it, and both political parties appear to support portability.**

C. How do these changes affect your estate planning?

(1) If you are married, and if you have met with us in the past to do your estate planning or to update your documents, then we have probably included a so-called A/B plan (perhaps with "GAP" language in your documents to deal with the difference between the Tennessee tax-free amount and the Federal tax-free amount). That GAP language is now unnecessary and can be omitted. The A/B plan could still be quite beneficial to protect assets if your surviving spouse should remarry, or to address potential future changes in the law, without relying on portability, but the details of the A/B plan may be unnecessary in your particular situation. In other words, you should consider simplification of your plan.

(2) Under the law that is currently in effect, your income tax basis for an asset you receive through an inheritance (other than retirement funds) is equal to the fair market value of that asset at the date of the death of the person who left it to you upon his or her death. (This is called "stepped-up basis.") In other words, if you receive stock worth $110,000 through an inheritance from your parent (who originally bought the stock for $10,000) your income tax basis in the stock will be equal to the fair market value of the stock at the time of your parent's death (regardless of how much your parent paid for the stock during his or her lifetime). **The estate tax value of the stock is also its fair market value at the date of your parent's death,** so the Executor of your parent's estate will have to report an asset of $110,000 on the estate tax return. If you sell the stock on the day after your parent dies, you will have no capital gain (assuming you sell the stock for its value on the day your parent died).

(3) By contrast, all of the assets that are invested in IRAs, 401(k)s, many tax-deferred annuities, etc. (referred to herein as "retirement funds") are typically subject to ordinary income tax (other than Roth IRAs), both during the lifetimes of the participant and spouse after they reach their 70's, and after death when these funds are passed on to children, grandchildren, nieces, nephews and/or beneficiaries other than tax-exempt charities.

(4) Another point to remember is that the distribution of assets into trusts for beneficiaries will be complicated when a substantial portion of your estate is in retirement funds.

II. HEY, AM I IN THE WRONG SEMINAR?? I THOUGHT THIS WAS ABOUT THE BRAND-NEW RULES FOR RETIREMENT ASSETS . . .

A. AND RIGHT YOU ARE: This IS a seminar about the new rules for retirement assets, and the reason for going into the A/B Plan and portability in such detail for you (especially with the current estate-tax-free amounts) is that there is no stepped-up basis for most retirement funds, and the federal gift and estate tax issues are now much less important to clients than the income tax issues have become.

B. THE BIG NEWS IS THAT THE LAW GOVERNING THE TAXATION OF RETIREMENT FUNDS changed significantly on December 20, 2019, when President Trump signed the SECURE Act (aptly named: "Setting Every Community Up for Retirement Enhancement"). Folks, this Act really IS a "Set Up" for the American taxpayers, especially those with significant amounts in retirement funds.

(1) The Act passed the House 417-3 in **May of 2019.**

(2) **But** it was so bogged down in the Senate that **no one thought it would pass last year.**

(3) Then, at the **very end of 2019,** those rascals in Washington attached the Act to a comprehensive spending bill and passed it, AND

(4) **President Trump signed it into law on December 20, 2019.**

(5) Its provisions are **effective January 1, 2020.**

(6) There's a little **good news** in the Act, but

(7) There's a **whole lotta bad news** about it, too!

C. SO WHAT IS THE GOOD NEWS?

(1) **Were you born AFTER June 30th, 1949?** If so, you don't have to start taking the Required Minimum Distributions **(RMDs)** from your IRA until you reach the age of 72.

(2) AND, even if you turn 70½ in 2020, you can still make a "**Qualified Charitable Deduction" (QCD)** this year, and next year too.

(3) There's a new **"Qualified Birth or Adoption Distribution"** deduction available to younger IRA / 401(k) participants to take up to $5,000 out (before reaching age 59½) without the penalty that would normally apply for an early withdrawal, for expenses for certain births or adoptions (although you still have to pay income tax on the funds you withdraw).

(4) If you are over age 70½ and still earning income, **you can contribute to an IRA** (you couldn't before the Act was passed); however, you do want to coordinate with your financial advisor or CPA if any QCDs and/or RMDs are involved.

(5) **Business owners** may be able to use **new tax credits** to offer retirement plans for their employees.

(6) Anyone who receives a **taxable stipend or other income** to help with **graduate or postdoctoral studies** can now "count" those amounts as compensation when determining IRA/Roth IRA contributions.

(7) If a **529 plan** was created for someone you care about, the money in the account can now be used for expenses incurred through **Apprenticeship Programs** (if registered and certified with the Department of Labor), including fees, books, supplies and necessary equipment.

(8) Money held in **529 plans** can also now be used to pay up to **$10,000** (the lifetime limit per person) **of principal and/or interest on the plan beneficiary's student debt ("qualified education loans")**, AND an **additional $10,000 can be used** to pay off the outstanding educational debt of **each of his or her siblings.**

D. BEFORE WE TALK ABOUT THE BAD NEWS, YOU SHOUD KNOW THAT MANY OF THE OLD RULES FOR "PARTICIPANTS" FOR TAKING REQUIRED MINIMUM DISTRIBUTIONS (RMDs) FROM RETIREMENT ASSETS HAVE NOT CHANGED

(1) There is **one simple way to calculate your Required Minimum Distributions (RMDs)** during your lifetime if you are the plan "participant" (the owner): **USE THE UNIFORM TABLE** (unless you have a trophy wife or husband — see the following paragraphs)**.** The Uniform Table is reproduced at the end of this handout as **Exhibit A**.

When you reach your Required Beginning Date (RBD), you must still divide the balance in your account (which is revalued annually) by your life expectancy factor each year to meet the Required Minimum Distribution rules. Your particular life expectancy factor is called your **divisor**. Most of you greatly prefer a **BIG DIVISOR**, because the bigger the divisor, the smaller will be your **required** distributions (and your income tax) each year, AND the longer you can stretch out your retirement benefits tax-free, AND the more you can (hopefully) pass on to your beneficiaries upon your death.

The only exception to the rule that you will use the Uniform Table when you reach your RBD to figure your RMDs is **if you have a trophy wife or husband**; that is, if your husband or your wife is more than ten years younger than you are (a real "trophy" for many of us), then you get to use **bigger divisors**, because the joint life expectancy for you and your spouse will be longer than that figured into the Uniform Table. If you name your much-younger spouse as your sole beneficiary, your bigger divisor will mean you can stretch out your retirement benefits for a longer time (assuming he or she doesn't want to spend them faster . . .), and your income tax bill will be lower each year, by contrast to those who use the Uniform Table.

(2) It is still true that the **identity of your designated beneficiary does not have to be finally determined until September 30th of the year after the year of the participant's death.**

E. SO LET'S HEAR THE BAD NEWS:

(1) **The biggest change in the law is this:** After your death, other than your **surviving spouse**, your **minor child**, certain **disabled** or **chronically ill** beneficiaries, or a beneficiary who is less than 10 years younger than you, **your designated beneficiary will not be able to use his or her life expectancy to figure his or her RMDs. Instead, all retirement funds must (in most cases) be distributed within ten years following the death of the participant (and/or his or her spouse).** To understand the economic impact of this change on an IRA worth $100,000 at your death, passing to your child who is 50 years old, see the example attached as **Exhibit B.** Another issue to consider is that, when all this income-taxable money is forced out to your beneficiary over a period of ten years following your death, the beneficiary faces potentially significant state income tax liability in addition to his or her federal income taxes, depending on the beneficiary's state of residence. See **Exhibit C.**

(2) Most of our clients who chose to use **trusts** to manage retirement fund distributions **for beneficiaries who either cannot handle money or need "asset protection"** because of a concern about potential divorce issues, lawsuits, government entitlements or other concerns **will no longer be able to "stretch out" the distributions from retirement funds through such asset protection trusts for their beneficiaries.**

(3) Attached as **Exhibit D** is a helpful chart, **Planning for Retirement Benefits After SECURE Act.**

F. WE NEED TO GIVE YOU SOME DEFINITIONS TO HELP YOU UNDERSTAND THE ATTACHED CHART:

(1) What is a **Non-Designated Beneficiary?** A **Non-Designated Beneficiary** is a charity, an estate, or a non-individual.

(2) What is a **Designated Beneficiary?** A **Designated Beneficiary** is **an individual** who is designated as a beneficiary under the terms of the retirement plan or, if the plan permits an election, then by the retirement plan participant's **deliberate election** (or by the election of the participant's **surviving spouse**), usually through a **beneficiary designation form.**

(3) **Can a Trust be considered as a Designated Beneficiary?** That depends. **Retirement Account Trusts** (RATs): One type of trust, commonly referred to as a "conduit trust," **can** be particularly useful in managing retirement accounts — in our firm, we call our typical conduit trust a "Retirement Account Trust" (RAT). In addition to allowing distributions to be stretched out over the longest possible time, RATs offer

the protection of oversight by a Trustee, which can be crucial if part of a retirement account passes to a young or foolish or unfortunately-married beneficiary who may be tempted (or persuaded) to over-withdraw from the account. Further, a RAT allows the original owner of the account to have greater control over where the benefits go after the initial beneficiary's death. For example, in a blended family in which both spouses have their own children, the first spouse to die can leave his or her IRA in a RAT for his or her spouse that will direct any balance to his or her own children once the surviving spouse dies. Finally, RATs offer certain protection to the assets they hold. If an IRA is held by the plan participant, or by his or her spouse, it enjoys certain protections from creditors or court judgments. However, the US Supreme Court has held that a "non-spouse beneficiary" such as a child or grandchild does *not* have those protections. If you leave an IRA to an individual other than your spouse, outside of a RAT, and he or she is successfully sued, experiences financial difficulties or is divorced, the assets in the account could easily be vulnerable to court judgments, creditors' claims or a divorce settlement. However, retirement assets in a RAT receive a certain degree of protection from such threats. As with a RAT for a spouse, you also can direct where the balance in the RAT passes after the beneficiary's death.

(4) Our typical "Retirement Account Trust" functions as a simple **"conduit" trust** for the benefit of one particular individual for his or her lifetime, for example, and still qualifies as a **Designated Beneficiary.** Certain Special Needs Trusts can be drafted specifically to receive and manage retirement funds for the benefit of a disabled or chronically ill beneficiary, and those trusts would be considered **Designated Beneficiaries.** [See page 10 below for more on naming trusts as beneficiaries of IRA benefits.]

(5) Remember that the question of whether you have a **Designated Beneficiary** does not have to be finally determined until September 30th of the year after the death of the participant or his or her spouse, so if a charity is named to receive 50% of your IRA on your beneficiary designation form, and your only child is named to receive the other 50% of the IRA, then so long as the charity receives its entire 50% interest before September 30th of the year after your death, your child will automatically become a **Designated Beneficiary.**

(6) What is an **Eligible Designated Beneficiary?** An **Eligible Designated Beneficiary** will be any one of the following: The participant's surviving spouse; the minor child of the participant; a beneficiary who is considered to be "disabled" under Internal Revenue Code Section 72(m)(7); a beneficiary who is considered to be "chronically ill" under Internal Revenue Code Section 7702(B)(c)(2); or a beneficiary who is not more than 10 years younger than the plan participant.

(a) Participant and surviving spouse must be lawfully married;

(b) A “minor child” cannot be a grandchild of the participant;

(c) Standards for “disabled” and/or “chronically ill” may be difficult to meet.

G. HOW DOES THE ATTACHED CHART WORK UNDER THE NEW RULES?

(1) There is one special rule **if the participant dies BEFORE HIS REQUIRED BEGINNING DATE (RBD)**: If there is a **Non-Designated Beneficiary** such as an estate or a trust that does not qualify as a “conduit” or other special trust arrangement before September 30th of the year *following* the participant’s death, **the entire balance in the IRA must be distributed over Five Years after the death of the participant.** If there IS a **Designated Beneficiary,** or if actions can be taken to have a Designated Beneficiary or Beneficiaries before September 30th of the year after death, then the Five-Year Rule does NOT apply, and the rules discussed below apply instead.

(2) **If the participant dies AFTER HIS REQUIRED BEGINNING DATE:** If there is a **Non-Designated Beneficiary** such as an estate or non-qualifying trust, **the entire balance in the IRA must be distributed over the *participant’s* remaining life expectancy. CAUTION:** The chart you must use to compute this remaining life expectancy **forces distributions out over a much shorter time** than the Uniform Table everyone is accustomed to using. See the Single Life Expectancy Table attached as **Exhibit E**.

(3) **Where the surviving spouse is the ONLY beneficiary:** The spouse is treated as an **Eligible Designated Beneficiary** and she still has the option to ROLL OVER the benefits tax-free to an IRA in her name alone, which is often the BEST CHOICE; she will **begin to take the benefits out over her life expectancy after she reaches age 72 (if she was born after June 30th of 1949)**. By contrast, if the benefits are payable to a so-called “Conduit Trust” for the surviving spouse’s benefit, she will be **required to start taking distributions by the end of the year in which the deceased participant would have reached age 72.** The distributions are based on the spouse’s life expectancy, recalculated annually. **Upon the death of the surviving spouse, all funds remaining in the retirement account(s) must be withdrawn over the following ten-year period.**

(4) However, sometimes (usually in a second marriage), the plan participant wants to direct that the surviving spouse’s interest in the retirement funds should be distributed into a trust solely for the surviving spouse’s lifetime,

but **authorizes the Trustee to accumulate a portion or all of the distributions from the retirement funds within the trust**. Even a so-called "QTIP Trust" for a surviving spouse *could* be treated this way if the trust is not drafted as a "conduit" trust [flowing through the trust to the spouse ALL of the Required Minimum Distributions (RMDs)]. This type of marital trust would NOT qualify as an "Eligible Designated Beneficiary," and ALL benefits would have to be paid <u>into the trust</u> within ten years after the participant's death. This usually means higher income taxes over a shorter period of time.

(5) **Where there is ONLY ONE <u>individual</u> beneficiary who is NOT the spouse, but who IS an "Eligible Designated Beneficiary" (minor child of the participant; disabled or chronically ill beneficiary; or beneficiary who is less than 10 years younger than the participant):**

(a) If the beneficiary is the **minor child of the plan participant**, the benefits will be distributed **over the life expectancy of the child until he or she reaches majority**, at which point all benefits will have to be withdrawn **by the end of the following 10 years**. If the minor child is named to receive these benefits directly and *outright*, without the benefit of a trust, then normally a legal guardianship must be instituted, with annual accountings and court supervision, including the posting of a bond, etc., until the child reaches majority, at which point he or she could become the outright owner of the account. By contrast, if a so-called "conduit" trust is created for the minor, the benefits can be managed by the child's Trustee for the child's benefit, using the child's life expectancy, but when the minor reaches majority, again all benefits must be taken *by the Trustee* and distributed to the child by the end of the following 10 years.

(b) If the beneficiary is **chronically ill or disabled**, and if an accumulation (non-conduit) trust is created **for the special needs of the beneficiary**, at this point we understand that the new law will permit a payout based on the life expectancy of the special needs beneficiary; thus, the benefits can be managed by his or her Trustee for the beneficiary's special needs, but when the life beneficiary dies, all benefits must be distributed by the Trustee to the "remainder beneficiaries" by the end of the following 10 years.

(c) A **"chronically ill"** person is any individual who has been certified by a licensed health care practitioner as being unable to perform, without assistance, at least two activities of daily living [eating, toileting, transferring, bathing, dressing, and continence] for at least 90 days; or requiring substantial supervision to protect the

individual from threats to health and safety due to sever cognitive impairment

(d) An individual is considered **"disabled"** if he or she 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.

One interesting case on the issue of "disability" originated in Tennessee: *Pendergast v. Commissioner of Internal Revenue,* United States Tax Court, Docket No 25409-14S. Taxpayer Pendergast was diagnosed with alcoholism in 1990, and his affliction continued through the events occurring in 2012 which gave rise to the tax litigation. The Judge determined that this taxpayer was "unable to engage in his customary, or any comparable, substantial gainful activity because of his alcoholism." Because his physician's letter stated that "his alcoholism will likely cause his death," and because the proof showed that his condition was "so chronic and severe in 2012 that it rendered him unable to take the steps necessary to break his more than 20-year chain of addiction with reasonable effort and safety," the Court determined that he was "disabled within the meaning of that term in section 72(m)(7)…"

(e) If the beneficiary is **less than ten years younger than the plan participant, AND if he or she is named to receive the benefits outright or in a "conduit" trust,** then he or she can withdraw the plan benefits over his or her life expectancy, and at his or her death, the ten-year requirement to take distributions will kick in.

III. MORE ON RETIREMENT BENEFITS PAYABLE TO A TRUST

A. Yes, you can name a trust as a "designated beneficiary" of retirement benefits… As discussed above, it's clear under both the old and the current rules that you can indeed name a trust as the designated beneficiary of retirement benefits. The basic trust requirements are that the trust must be **valid under state law**; the beneficiaries of the trust must be **individuals, and these individuals must be identifiable from the trust instrument** (meaning that it must be possible to determine that all persons who could ever qualify as a beneficiary of the trust are "designated beneficiaries" as of September 30th of the year after the year in which the plan participant died); the trust must be **irrevocable** (as is a "testamentary trust" created by your Will — after you die and your Will is probated), or the trust must, by its terms (like the type of trust normally included in a revocable living Trust), become irrevocable upon the death

of the retirement plan participant (that's you); and the trustee must provide certain **documentation** concerning the trust provisions to the "plan administrator" no later than October 31 of the year following the year in which the plan participant dies.

B. **The requirement that all trust beneficiaries must be individuals can be difficult to meet:** If the trust authorizes (directly or indirectly) the payment of funeral expenses, debts, or estate taxes from any part of the plan benefits that are payable to the trust, the "all individuals" requirement will not be met. The IRS insists that a plan participant's estate is NOT an individual for this purpose. And, if a charity is named as a direct or potential beneficiary in some circumstances, the charity is NOT an individual, and so NO BENEFICIARIES will then be considered individuals (even if they *are* individuals), and the trust will not qualify as a designated beneficiary.

C. **Our preferred type of trust to hold retirement benefits has been the "conduit" Retirement Account Trust ("RAT") discussed above.** Under the SECURE Act, a conduit trust still qualifies as a "designated beneficiary," but NOT necessarily as an "eligible designated beneficiary." What this means is that, if you have a beneficiary who is **not** your spouse, your minor child, chronically ill or disabled — but who absolutely **cannot** handle money, so that you need to create a trust for him or her upon your death, you can direct that person's share of your retirement benefits must be held in a conduit trust. The drawback is that all the benefits in the trust's share of your retirement funds must be paid out to (or for the benefit of) your beneficiary at some point **over the ten years following the date of your death**. In this type of situation, an "accumulation" trust might be preferable.

D. **What is an accumulation trust? A trust that accumulates the IRA distributions inside the trust is called an "accumulation" trust**, rather than forcing the funds out to the beneficiary, as in a RAT or "conduit" trust. And yes, you CAN name an accumulation trust to receive your retirement benefits. Of course, you also CAN withdraw your entire IRA balance and play the slot machines in Vegas until the money runs out. (My guess is none of you will be rushing out to do that.) In other words, just because you CAN do something doesn't mean it's the BEST thing to do. Similarly, **although it is clearly possible to name an accumulation trust as the beneficiary of your retirement plan benefits, it is not usually the wisest thing to do from an overall tax standpoint.** This is so because the income tax rates applicable to income trapped (accumulated) inside the trust get very high, very fast compared to the income tax rates of almost all other taxpayers. As with a conduit trust, an accumulation trust must take withdrawals of the retirement funds at some point or points within ten years after the participant's death, but the accumulation trust then holds these income-taxable distributions within the trust, at the highest possible brackets. [The only exception to this rule, as far as we know, is an accumulation trust for a chronically ill or disabled (special needs) beneficiary; for

such beneficiaries, we understand that the retirement benefits in an accumulation trust can be withdrawn over the beneficiary's lifetime.]

IV. SO WHAT SHOULD YOU DO?

A. Consider the following options for dealing with the new rules:

(1) **Roth Conversions: Roth IRAs are not income taxable, either to you when you withdraw funds during your lifetime, or to your beneficiaries following your death.** To evaluate whether it is worth it for you to consider converting any portion of your retirement funds to Roths, you must take into account your current and future income tax brackets (if you are married and your spouse dies, but your income stays the same, your bracket will likely increase); you need to think about your health and age (and that of your spouse); and you should know the approximate income tax brackets of the individuals who will receive your benefits after you (and your spouse) are gone. The purpose of converting your IRAs to Roths is to use your (potentially lower) income tax brackets to pay tax on your retirement funds over your lifetime, leaving income-tax-free retirement funds to your chosen beneficiaries following your death(s). To do this successfully, you must **bet on living long enough in the future** to make the gamble of paying tax now pay off. **Remember that Roths should be paid to "designated beneficiaries," and if they are, then all Roth funds must be taken out at some point(s) within 10 years.** Most financial advisors are recommending that, all factors being equal, it is probably best to **hold Roth IRAs within the account(s) until the 10th year, to maximize the tax-free growth for as long as possible.**

(2) **Use IRA Funds For Charitable Gifts:** If you have charitable intentions, the best way to make charitable gifts following your death (and that of your spouse) is to **designate your chosen charities as the direct beneficiaries of all or part of your retirement funds**. Making this happen is simple: You designate each charity as a beneficiary of each of your retirement accounts, usually in percentages. You should definitely double-check the name, address and EIN for each charity, and be sure the amounts add up to 100% of your retirement account (if that is your intention, of course). If you want to make a gift for a special purpose, it's a good idea to contact the charity for specific information on how best to communicate your intentions. Finally, if your children are in a position to appreciate the ability to make charitable gifts themselves after you are gone, you should explore the possibility of designating a **donor-advised fund as the beneficiary of a portion or all of your retirement account(s).** This option affords your children the opportunity to direct the manner in which the money will be spent in the years following your death(s), putting them in charge of carrying out the family's charitable intentions well into the future. The benefits of this option are that ALL the

money will pass free of ALL income taxes to the charities you designate (without probate, and without much paperwork or difficulty after your death), and if you change your mind about how much to give or which charities to choose, you simply change your beneficiary forms. (In other words, you don't have to pay for the legal services required to "re-do" this aspect of your plan!) What's not to love about this?

(3) **Combine A Lifetime Payout For Your Beneficiary With A Charitable Remainder Trust:** If you have charitable intentions, but you also want to provide a controlled income stream for a beneficiary during his or her lifetime, you can direct that a portion of your retirement funds will be distributed into a **"charitable remainder trust,"** which provides either a fixed annuity for your individual beneficiary, followed with the balance of the funds passing to your chosen charity upon your beneficiary's death; or instead of a fixed annuity, your individual beneficiary can receive a "unitrust" amount, which is a fixed percentage (3%, 4%, etc.) of the assets held in the trust during his or her lifetime. That way, if the assets are invested well and the fund grows, your beneficiary receives a percentage of the growth in the overall fund over his or her lifetime.

(4) We can consider using an **ILIT** (that is, an **Irrevocable Life Insurance Trust**) to **use retirement funds during your lifetime to fund the purchase of a life insurance policy on your life (and/or that of your spouse).** This creates an estate- and income-tax-free trust to control the distribution of funds after your death(s) for your chosen beneficiaries. The proceeds from the ILIT pass either directly to your beneficiaries or in lifetime, asset protection trusts, and there should be little or no federal estate tax on those assets regardless of the future fluctuations in the federal exemptions. This technique can pass on your combined net worth **intact** to your heirs if it is implemented when you (and your spouse) are still insurable.

(5) **Maximize Your Current Income Tax Bracket** by withdrawing more than your RMDs, but not so much that you are bumped up into the next-higher tax bracket. This technique may be coordinated with Qualified Charitable Deductions (QCDs) as well.

B. Review all of your current primary and contingent beneficiaries in light of these new rules. Here are the specific recommendations:

(1) First, **contact each and every one of your plan administrators (IRAs, 401(k)s, 403(b)s, etc.)** and find out whether, after your death, your spouse can elect to **roll over the benefits payable to him or her into the spouse's own separate retirement account.**

(2) Second, **while you have each of your plan administrators on the phone,** be sure to confirm that, **if you name your children as the direct or contingent beneficiaries, each one of them can elect, under the terms of the plan, to take his or her share out either right away or at any time(s) over a period of 10 years after your death.**

(3) Third, and again **while you have them on the phone,** make sure that you have specified that, **if one of your children dies before you (and your spouse)**, the deceased child's share **will pass to his or her descendants** ("issue"), and NOT to your other surviving children (thus cutting out your grandchildren). [But we must talk if one of your children predeceases you and your grandchildren are young!]

(4) Fourth, consider the **age of each of your beneficiaries, their tax brackets and state of residency;** then consider **the number of beneficiaries and their individual circumstances.**

(5) Fifth, **summarize the assets in your name alone (and in your spouse's name) OTHER THAN the retirement benefits,** to enable you to compare the relative size of your after-tax estate versus your retirement funds**.**

(6) Sixth, after you have taken all of these steps, **give us a call** to review your existing assets and your current beneficiary designations, and then **to determine what's best for you at this time**, based on the higher estate tax-free amounts and the current retirement benefit distribution rules.

Exhibit A

Table III
(Uniform Lifetime)

(For Use by:
- **Unmarried Owners,**
- **Married Owners Whose Spouses aren't More Than 10 Years Younger, and**
- **Married Owners Whose Spouses aren't the Sole Beneficiaries of Their IRAs)**

Age	Distribution Period	Age	Distribution Period
70	27.4	93	9.6
71	26.5	94	9.1
72	25.6	95	8.6
73	24.7	96	8.1
74	23.8	97	7.6
75	22.9	98	7.1
76	22.0	99	6.7
77	21.2	100	6.3
78	20.3	101	5.9
79	19.5	102	5.5
80	18.7	103	5.2
81	17.9	104	4.9
82	17.1	105	4.5
83	16.3	106	4.2
84	15.5	107	3.9
85	14.8	108	3.7
86	14.1	109	3.4
87	13.4	110	3.1
88	12.7	111	2.9
89	12.0	112	2.6
90	11.4	113	2.4
91	10.8	114	2.1
92	10.2	115 and over	1.9

Exhibit B

COMPARISON OF STRETCH IRA FUNDS vs. 10-YEAR PAYOUT

Beneficiary's Age: 50
(as of December 31 of the year After the Participant Dies)
Initial Amount in the IRA: $100,000
Estimated Rate of Return: 3%

YEAR 1 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$2,923.98	$10,000
Remaining Balance:	**Remaining Balance:**
$99,988.30	$92,700

RMD Difference: $7,076.02

YEAR 2 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,011.70	$10,300
Remaining Balance:	**Remaining Balance:**
$99,885.90	$84,872

RMD Difference: $7,288.30

YEAR 3 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,102.05	$10,609
Remaining Balance:	**Remaining Balance:**
$99,687.37	$76,490.89

RMD Difference: $7,587.50

YEAR 4 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,195.11	$10,927.27
Remaining Balance:	**Remaining Balance:**
$99,387.03	$67,530.53

RMD Difference: $7,732.16

YEAR 5 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,290.96	$11,255.09
Remaining Balance:	**Remaining Balance:**
$98,978.95	$57,963.70

RMD Difference: $7,964.13

YEAR 6 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,389.69	$11,592.74
Remaining Balance:	**Remaining Balance:**
$98,456.94	$47,762.09

RMD Difference: $8,203.05

YEAR 7 RESULTS:

Before SECURE ACT	**After SECURE Act**
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,491.38	$11,940.52
Remaining Balance:	**Remaining Balance:**
$97,814.53	$36,896.22

RMD Difference: $8,449.14

YEAR 8 RESULTS:

<u>Before SECURE ACT</u>	<u>After SECURE Act</u>
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,596.12	$12,298.74
Remaining Balance:	**Remaining Balance:**
$97,044.96	$25,335.40

RMD Difference: $8,702.62

YEAR 9 RESULTS:

<u>Before SECURE ACT</u>	<u>After SECURE Act</u>
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,704.01	$12,667.70
Remaining Balance:	**Remaining Balance:**
$96,141.18	$13,047.73

RMD Difference: $8,963.69

YEAR 10 RESULTS:

<u>Before SECURE ACT</u>	<u>After SECURE Act</u>
RMD before SECURE Act:	**RMD after SECURE Act:**
$3,815.13	$13,047.73
Remaining Balance:	**Remaining Balance:**
$95,095.83	$0

RMD Difference: $9,232.60

Total RMDs Before SECURE ACT:	**TOTAL RMDs AFTER SECURE ACT:**
$33,520.13	**$114,638.79**

EXHIBIT C

State Income Tax Chart

Alabama	5.00%		Montana	6.90%
Alaska	0%		Nebraska	6.84%
Arizona	4.54%		Nevada	0%
Arkansas	6.90%		New Hampshire	0%
California	13.30%		New Jersey	10.75%
Colorado	4.63%		New Mexico	4.90%
Connecticut	6.99%		New York	8.82%
Delaware	6.60%		North Carolina	5.25%
Florida	0%		North Dakota	3.22%
Georgia	5.75%		Ohio	4.997%
Hawaii	11.00%		Oklahoma	5.25%
Idaho	6.93%		Oregon	9.90%
Illinois	4.95%		Pennsylvania	3.07%
Indiana	3.23%		Rhode Island	5.99%
Iowa	8.53%		South Carolina	7.00%
Kansas	4.60%		South Dakota	0%
Kentucky	5.00%		Tennessee*	1%
Louisiana	6.00%		Texas	0%
Maine	7.15%		Utah	4.95%
Maryland	5.75%		Vermont	8.75%
Massachusetts	5.10%		Virginia	5.75%
Michigan	4.25%		Washington	0%
Minnesota	9.85%		West Virginia	6.50%
Mississippi	5.00%		Wisconsin	7.65%
Missouri	5.40%		Wyoming	0%
*Tennessee Tax will become 0% starting in 2021.				

Planning for Retirement Benefits After SECURE Act

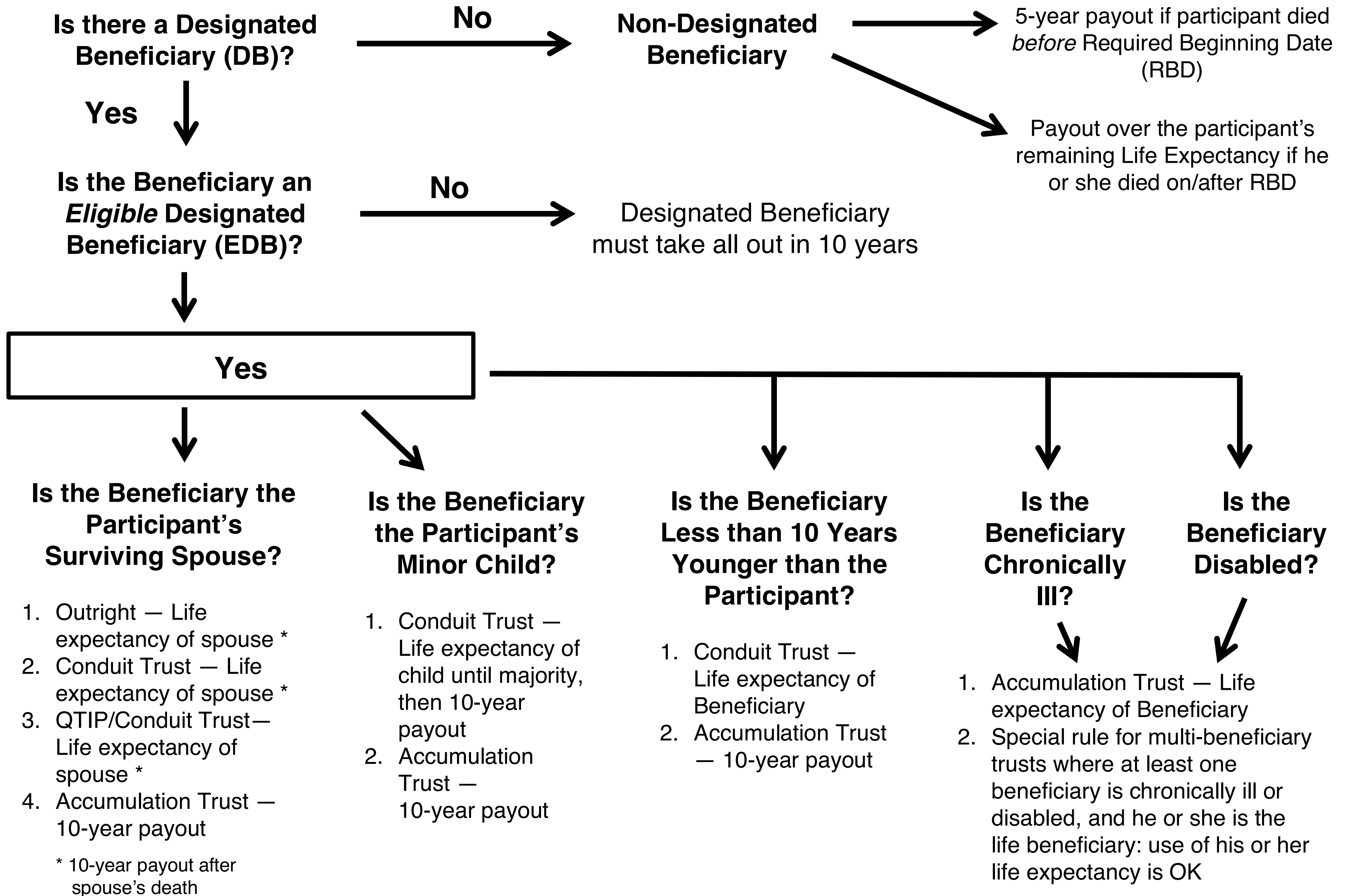

Exhibit D

Table I
(Single Life Expectancy)
(For Use by Beneficiaries)

Age	Life Expectancy	Age	Life Expectancy
0	82.4	28	55.3
1	81.6	29	54.3
2	80.6	30	53.3
3	79.7	31	52.4
4	78.7	32	51.4
5	77.7	33	50.4
6	76.7	34	49.4
7	75.8	35	48.5
8	74.8	36	47.5
9	73.8	37	46.5
10	72.8	38	45.6
11	71.8	39	44.6
12	70.8	40	43.6
13	69.9	41	42.7
14	68.9	42	41.7
15	67.9	43	40.7
16	66.9	44	39.8
17	66.0	45	38.8
18	65.0	46	37.9
19	64.0	47	37.0
20	63.0	48	36.0
21	62.1	49	35.1
22	61.1	50	34.2
23	60.1	51	33.3
24	59.1	52	32.3
25	58.2	53	31.4
26	57.2	54	30.5
27	56.2	55	29.6

(Continued)

Table I (Single Life Expectancy) (For Use by Beneficiaries)			
Age	**Life Expectancy**	**Age**	**Life Expectancy**
56	28.7	84	8.1
57	27.9	85	7.6
58	27.0	86	7.1
59	26.1	87	6.7
60	25.2	88	6.3
61	24.4	89	5.9
62	23.5	90	5.5
63	22.7	91	5.2
64	21.8	92	4.9
65	21.0	93	4.6
66	20.2	94	4.3
67	19.4	95	4.1
68	18.6	96	3.8
69	17.8	97	3.6
70	17.0	98	3.4
71	16.3	99	3.1
72	15.5	100	2.9
73	14.8	101	2.7
74	14.1	102	2.5
75	13.4	103	2.3
76	12.7	104	2.1
77	12.1	105	1.9
78	11.4	106	1.7
79	10.8	107	1.5
80	10.2	108	1.4
81	9.7	109	1.2
82	9.1	110	1.1
83	8.6	111 and over	1.0