Vol. 11, No. 1 **Choate's Notes** Spring 2009
A free newsletter for estate planners, from Natalie B. Choate

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Dear estate planning professional:

Just ask Angelique? IRS Notice 2008-30 announced that a designated beneficiary can roll money directly from an inherited traditional qualified plan to an "inherited" Roth IRA, provided (in years before 2010) his modified adjusted gross income is under $100,000. That was quite a shocker in itself, but here's another tidbit from that Notice: If you have questions about the notice, you can email its author, Angelique Carrington, at RetirementPlanQuestions@irs.gov. Do you suppose that email address works for all kinds of retirement plan questions, or just questions about Notice 2008-30? If you find out, please let me know!

New gift/estate tax IRS tables. The IRS has issued new actuarial tables for gift and estate tax purposes, as they are required to do every 10 years under § 7520(c)(3). You can find the new tables at http:www.irs.gov/retirement/article/0,,id=206601,00.html. These tables will affect your calculations for charitable remainders trusts, QPRTs, etc., but do NOT affect minimum required distributions from retirement plans! The life expectancy tables we use for calculating minimum required distributions (last updated in 2002) are not affected by the every-10-years update of the gift and estate tax mortality tables.

The National Taxpayer Advocate, Nina Olson, in her 2008 Annual Report to Congress, complained about the Tax Code's complexity including (among many other examples) "at least 16 separate incentives to encourage taxpayers to save for retirement. These incentives are subject to different sets of rules governing eligibility, contribution limits, taxation of contributions and distributions" (etc.). Tell me about it! She also criticized the constant changes, pointing out that amendments to the Tax Code were made at the rate of *more than one per day* in the five years 2003–2008. Read her report at http://www.irs.gov/advocate/article/0,,id=202276,00.html.

Longevity insurance in IRAs? A financial planner who is also a lawyer, engineer, and professor (I wonder if he does windows?) likes "longevity insurance" for his clients. That's an annuity that doesn't start paying until after the client reaches age 85 or 90 (a deferred immediate annuity in IRS lingo). So he asked me whether this type of annuity can bought with IRA funds. My reaction is no it can NOT be purchased inside an IRA. When IRA funds are used to purchase an "immediate" annuity (even a deferred one), the "Annuity payments must commence on or before the employee's required beginning date." Reg. § 1.401(a)(9)-6, A-1(c)(1). You can't get around this by having the contract pay $1 a year until age 85, then kick up to full benefits, because payments under a retirement plan annuity must generally be "nonincreasing" (with certain exceptions that wouldn't help here). Reg. § 1.401(a)(9)-6, A-14(a). Does anyone disagree?

Until the next issue,

Natalie B. Choate

Roth IRA Options Exploding

When Roth IRAs were invented in 1998, there were only two ways a participant could fund one, and zero ways for a nonspouse beneficiary to create a Roth IRA from any inherited plan. There are now **EIGHT** ways (that I've found so far) to get money into a Roth IRA! They are:

1. **Annual contribution** of up to $5,000 (as of 2009; or $6,000 if age 50 or older as of 12/31/09) from compensation income, in lieu of contribution to a traditional IRA. This method is permitted if your modified adjusted gross income (MAGI) is under a certain amount.
2. **Rollover (conversion) from a traditional IRA.** This method is not permitted in years prior to 2010 if MAGI exceeds $100,000; naturally the definition of "MAGI" is different for this type of Roth IRA contribution than for annual contributions.
3. **Rollover (conversion) from another type of traditional retirement plan.** This method has been permitted since 2008, subject to the same MAGI limit as #2. *This is the only "conversion" method that is available to beneficiaries as well as participants.*
4. **Rollover from a designated Roth account (DRAC)** (also called a "Roth 401(k)" or "Roth 403(b)" account). No income limit on this type of rollover.
5. A **Qualified Reservist Distribution** may be contributed, at any time within 2 years after the end of the reservist's active duty period, to any traditional or Roth IRA, without regard to normal IRA contribution limits. These contributions are nondeductible, so should always be made to a Roth IRA rather than being made as a nondeductible contribution to a traditional IRA. See § 72(t)(2)(G).
6. **Military death gratuities and servicemembers' group life insurance (SGLI) payments** with respect to a death from injury that occurred after October 6, 2001, may be contributed to a Roth IRA. § 408A(e)(2). This type of contribution was added by the HEART Act.
7. **Exxon Valdez oil spill settlement income** Certain individuals who received compensation in connection with the Exxon Valdez oil spill can contribute up to $100,000 of their settlement to a Roth IRA (regardless of their income level) or other eligible retirement plan. Eligible individuals include both plaintiffs in the Exxon Valdez lawsuit *and any individual who is the spouse or immediate relative of a plaintiff and beneficiary of such plaintiff's estate*. (Note that this is the only instance in which a nonspouse beneficiary can transfer inherited funds to the *beneficiary's own* retirement plan.) This contribution must be made in the same year as the payment is received (or may be made "for" that year at any time up until the due date of the tax return for that year). If made to a Roth IRA or DRAC, the contribution is includible in the individual's income, just like other Roth plan contributions. If contributed to a traditional plan, the contribution is excluded from the individual's income. Either way, the contribution is treated as a rollover contribution. For details, see § 504 of the Emergency Economic Stabilization Act of 2008 and IRS Publication 590. This type of contribution is not covered in the Internal Revenue Code.
8. **Airline bankruptcy payments to certain employees**. Certain "qualified airline employees" can contribute to a Roth IRA, within 180 days of receipt, or within 180 days of the date of enactment if later, certain payments they receive in connection with the bankruptcy of a "commercial passenger airline carrier." Note that, unlike the Exxon Valdez settlement contributions, the airline employee payments may be contributed *only* to a Roth IRA, not to any other type of retirement plan. For details, see § 125 of the Worker, Retiree, and Employer Recovery Act of 2008 and IRS Publication 590. This type of contribution is treated as a qualified rollover contribution to the Roth IRA, and is not covered in the Internal Revenue Code.