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A free newsletter for estate planners///*From Natalie B. Choate*

A fee-only financial planner has this gripe: Clients must pay his fees out of their after-tax bank account (a painful experience). Yet when asset-manager firms offer "free" financial planning advice to their IRA clients, their services are effectively being paid for by the IRA itself (through commissions). It's unfair but legal (under DOL Prohibited Transaction Exemption 97-11).

Big PLRs of 2002

Here is a list of the blockbuster PLRs of 2002 (in the field of estate planning for retirement benefits). Keep it handy. The PLRs listed here will answer over 50% of your benefits-planning questions in 2003—even though one of them has already been "reversed" by the fickle IRS.

2002-28025: If an IRA is payable to a trust for a minor, and trustee has power to "accumulate" any distribution from the IRA, then the contingent remainder beneficiaries of the trust are considered "beneficiaries" of the IRA for purposes of applying the MRD rules, even if the trust terminates (and all such accumulated distributions must be passed out to the child-beneficiary) when the minor reaches age 35. For an easy way around this ruling, see PLR 2002-35038 below.

2002-34019: An executor can distribute an IRA to the residuary beneficiaries of the estate. Distribution can be non-pro rata if authorized by the will, and does not trigger income to the estate or any beneficiary. Subsequent distributions from the IRA are income to the beneficiary who received the IRA from the estate. Executor distributed IRAs to charitable residuary beneficiaries, and funded shares of the individual residuary beneficiaries with non-IRD assets. As a result, no income tax was ever paid on the IRAs (because the charities were income tax-exempt). This technique was recommended in *Life and Death Planning for Retirement Benefits*, ¶ 7.4.09.

2002-34074: An IRA payable to a single trust that terminates on Participant's death could be divided into "separate accounts" for the separate beneficiaries of the terminating trust. A single trust named as Participant's beneficiary was required to split, at Participant's death, into three separate, equal, shares for decedent's three children. IRS ruled the IRA could be treated, for MRD purposes, as three separate accounts, one payable to each of the children. Division and funding of shares was mandatory under the trust; same rule might not apply if either step was discretionary. **BUT:** The "holding" in PLR 2002-34074 was 100% reversed by the IRS in three 2003 letter rulings (2003-17041, 2003-17043 and 2003-17044) issued to three beneficiaries of a trust that was itself named as beneficiary of an IRA. The relevant facts were indistinguishable from those in PLR 2002-34074, but the conclusion was the opposite: retirement benefits payable to a single named trust as beneficiary CANNOT be treated as separate accounts for minimum distribution purposes, even if the trust terminates at Participant's death and is divided into mandated predetermined shares for the respective trust beneficiaries. Since the 2003 PLRs are based on the final regulations, and PLR 2002-34074 was based on the proposed regulations, conservative practice would indicate that this should be consider the IRS's "final answer" (for now anyway).

2002-35038: A life trust for Participant's child qualified as a "see-through" trust, even though the trustee could accumulate IRA distributions during the child's life, because at death the trust would pass to "younger individual" beneficiaries appointed by child. Ruling does not mention what would happen if child died without exercising the power; does the IRS not understand

that the takers in default of appointment are just as much “beneficiaries” as the potential appointees?

2002-44023. A plan terminating when sole employee/owner died can purchase non-assignable variable annuity contract and distribute it to beneficiary, who pays income tax only as he receives distributions from the annuity. This method of finagling a life expectancy payout would also work for a beneficiary under a plan that permits only lump sum distributions, as explained in “Giving to the Grandchildren” by S. Gorin, *Trusts & Estates* magazine, Sept. 2002, p. 43.

2002-45055: Spousal rollover through a trust allowed. This ruling (and many similar since) shows the final regs were not meant to “repeal” the long line of rulings permitting spousal rollover through an estate or trust under the conditions described at *Life and Death Planning for Retirement Benefits* ¶ 3.2.09.

2002-47001 (TAM): An IRA cannot be “discounted” for estate tax purposes to reflect the built-in income tax bite. This result is exactly as I said it should be in “Estate Tax Valuation of Retirement Benefits,” *Trusts & Estates,* May 2002, p. 16.