Vol. 9, No. 1 **Choate's Notes** Spring 2007

A free newsletter for estate planners, from Natalie B. Choate

Dear estate planning professional:

The **Hewlett Packard digital sender**, 9100C, is the greatest invention since the ATM. Place a document in the tray, enter an email address, press "send," and the HP digital sender [they've gotta think of a better name for this thing] grabs the document, scans it, and sends it as a .pdf file to the email address you entered. Throw away your scanner and fax machine! This is MUCH better.[After publication, I heard H-P doesn't make this anymore...that figures!]

What's new at www.ataxplan.com: The first update to the 6th edition (2006) of *Life and Death Planning for Retirement Benefits* has just been posted. Also, for the first time **Special Reports** are being offered for download. Some are free and others (including my popular seminar handout "The 170 Best & Worst Planning Ideas for Your Client's Retirement Benefits," $39.95) are for sale. To inaugurate the new Special Reports web page, the "Health Savings Account" Special Report can be downloaded FREE through May 31st.

If you are not an "elder law" specialist but would like to understand the basics of **Medicaid** qualification; or if you ARE an elder law specialist and would like a resource your clients could read to get up to speed on the subject; I recommend Gabriel Heiser's new book, *How to Protect Your Family's Assets from Devastating Nursing Home Costs* (Phylius Press, 2007). This well organized book explains the rules in clear readable English. It does NOT replace the Medicaid lawyer; Gabriel makes clear that there are so many state-specific variations that you must consult an attorney before taking any action. $47 at www.MedicaidSecrets.com.

For several years, I've written a monthly Q&A column for financial advisors for **MorningstarAdvisor.com**. Starting this spring, the site will also offer a new monthly "podcast" in which I give a 10-minute update on some important current aspect of estate and distribution planning for retirement benefits. To read the column and listen to the Benefits Update, just go to MorningstarAdvisor.com. To get the column in the form of a monthly newsletter, financial advisors need to register, which is free.

One father I heard from chafes at having to hire a professional to help him provide for his disabled child. He points out that he can save tax-free for his retirement (with an IRA or 401(k)), or for his able children's education (with a 529 plan), all without hiring a lawyer; but the only way he can provide for his disabled child is with a special needs trust (not tax free—in fact, trusts are taxed at higher rates than individuals) that he must hire a lawyer to prepare! If you agree with him that "there is something wrong with this picture," check out his organization, **United Disabled for Economic Security** at www.uniteddisabled.org.

Until the next issue, Natalie B. Choate.

Retirement Benefit Riddles

Remember those old riddles, like when is a door not a door? (Answer: when it's ajar.) When wrapping up the 6th edition of *Life and Death Planning for Retirement Benefits* (2006), I ran across similar conundrums and paradoxes in the retirement plan distribution rules. Use these at parties to amaze your friends and impress your date. "¶" numbers refer to sections of the book:

When is an MRD not an MRD? Answer: When a qualified plan (QRP) requires all employees to start distributions by April 1 of the year following the year they reach 70½, even if still working and not a 5% owner. When a non-5% owner who is still working after the *plan's* RBD, but who has not reached the *statutory* RBD, receives an MRD from the plan, the money IS an MRD when it leaves the plan, but he can roll it over because it's NOT an MRD when the check arrives in his mailbox! See ¶ 1.4.05.

How can you erase an MRD that's already accrued? Answer: A surviving spouse who is sole beneficiary of her deceased spouse's IRA is required to take an MRD as beneficiary in the year after the year of the participant's death (if the participant died in his age 70½-year or later); but if in that calendar year she elects to treat the IRA as her own IRA, her MRD "as beneficiary" for that year becomes "unrequired." She is treated as "the participant" (owner) of the IRA retroactive to the beginning of the year, meaning that no distribution is required if she is under age 70½. ¶ 3.2.04.

How can taking a distribution AFTER age 59½ cause you to owe a 10% "premature distributions" penalty? Answer: If an under-59½ participant starts taking a series of substantially equal periodic payments (SOSEPP) when older than age 54½, then modifies the series before the fifth anniversary of the first payment, he retroactively loses the SOSEPP exemption (even if he's over 59½), and will owe the 10% penalty on all distributions received prior to age 59½. ¶ 9.3.01.

How can you owe the 10% penalty on a distribution that is not included in gross income? Answer: Normally, the 10% penalty applies to a pre-age 59½ distribution only to the extent the distribution is includible in gross income. However, if an under-age 59½ person converts his IRA to a Roth IRA, then less than five years later (and while still under 59½) takes a distribution from the Roth, he may owe the 10% penalty on that distribution…even though (because he already paid tax on the Roth in the year he converted it) it is NOT includible in gross income. ¶ 5.5.02.

How can income earned in 2007 be taxable in 2006? Answer: On Dec. 31, 2006, X contributes $3,000 to a separate IRA. By April 1, 2007, the IRA has grown to $3,075. He cashes out the $3,075, to undo his IRA contribution. The $75, even though almost all of it was earned in calendar 2007, is taxable in 2006. ¶ 5.6.01.

How can you die "before your IRA RBD" when you're OVER age 70½? Answer: If you die before April 1 of the year after the year you reach age 70½, you've died "before your RBD" even though you might actually be as old as age 71 at the time of your death. ¶ 1.4.08(C).

How can you die "after your RBD" when you're UNDER age 70½? Answer: When you annuitize your benefits under a defined benefit plan, even before reaching age 70½, the annuity starting date is treated as "the RBD" for several MRD purposes. ¶ 10.2.08.

How can a retiree be forced to take an MRD from his QRP <u>before</u> the RBD? Answer: The first year for which an MRD is required is the year the retiree reaches age 70½. Even though he can postpone that first year's MRD until April 1 of the following year (the RBD), he cannot roll over any distribution from the plan in the age 70½ year until after he takes the MRD for the year. Thus, if he wants to roll over the QRP benefits to an IRA in the year he reaches age 70½, he must first take out the MRD, even though he has not yet reached his RBD. ¶ 2.6.04.

Finally, my favorite: **What is it in the Tax Code that must be UNQUALIFIED in order to be QUALIFIED?** Answer: A *qualified* disclaimer is an irrevocable *unqualified* refusal to accept an interest in property. § 2518(b).