

This free document contains the complete Table of Contents of Natalie Choate's "Special Report: Ancient History" AND (as "sample pages") the *complete* discussion, from that Report, of "Qualified Charitable Distributions" under Code § 408(d)(8) as extended through 2011 by the "2010 Tax Relief Act," including the special rule for "backdating" Jan. 2011 QCDs into 2010 (see pp. 4–7).

# Ancient History

*Qualified Charitable Distributions,  
Minimum Required Distributions from Retirement Plans and IRAs  
Under the IRS's 1987 and 2001 Proposed Regulations,  
Assorted Grandfather Rules, and Other Obsolete Rules Applicable to  
Life and Death Planning for Retirement Benefits*

By:

**Natalie B. Choate, Esq.**

Nutter McClennen & Fish LLP

Boston, Massachusetts

[www.ataxplan.com](http://www.ataxplan.com)

This Special Report supplements the book *Life and Death Planning for Retirement Benefits* (7<sup>th</sup> ed. 2011). The book covers *today's* minimum distribution, income tax, and other rules that affect individuals' planning and compliance for their IRAs, Roth IRAs, and other retirement plans. This Special Report explains:

- "Qualified charitable distributions" under § 408(d)(8) as in effect for 2006–2009, *and as they have been extended through 2011 by the 2010 Tax Relief Act.*
- Various "grandfather rules" that are *no longer available* to most participants and beneficiaries, but might still be of benefit to a small number of individuals.
- Tax rules that have expired but that may be needed when you are preparing a tax return for a prior year when the rule was still in effect.
- How required minimum distribution rules were computed under proposed IRS regulations issued in 1987 and 2001.

**Detailed Table of Contents**

Warning and Disclaimer! ..... 3  
Abbreviations and Symbols ..... 3

**PART I: INCOME TAXES: EXPIRED DEAL, GRANDFATHER RULES** ..... 4

1. Qualified Charitable Distributions, 2006–2011 ..... 4  
    7.6.08 Qualified Charitable Distributions ..... 4  
    7.6.09 Planning uses and pitfalls of QCDs..... 6  
    7.6.10 Extension of QCDs through 2011; special rule for Jan. 2011 QCDs .... 7

2. Special Income Averaging: Participant Born Before 1936 ..... 7

**PART II: EXPIRED ESTATE TAX DEAL** ..... 10

**PART III: MINIMUM DISTRIBUTION GRANDFATHER RULES** ..... 11

1. Pre-1984 TEFRA 242(b) Designations ..... 11  
2. Pre-1987 403(b) Plan Balances ..... 13

**PART IV: 2009 ONE-YEAR SUSPENSION OF MRDS** ..... 20

**PART V: MINIMUM DISTRIBUTIONS UNDER 1987 PROPOSED REGULATIONS** . 30

Understanding the Minimum Distribution Rules ..... 31  
Death before the RBD: the Five Year Rule ..... 32  
The Required Beginning Date: When It Is ..... 38  
The RBD: Required Lifetime Distributions ..... 41  
Recalculating Life Expectancies: Participant and Spouse ..... 44  
Naming a Non-Spouse DB: The Incidental Benefit (MDIB) Rule ..... 46  
What Happens After the RBD ..... 48  
Taking Distributions from Multiple IRAs ..... 52

**PART VI: MINIMUM DISTRIBUTIONS UNDER 2001 PROPOSED REGULATIONS** 53

Introduction: New Proposed Regulations ..... 54  
The New Way to Determine Lifetime Distributions ..... 56  
The New Way to Determine Post-Death Distributions ..... 62  
Identity of DB Determined at End of Year after Death ..... 72  
Special Rules for the Surviving Spouse ..... 77  
Other Changes and Clarifications Made By New Proposed Regs ..... 86  
What’s Unchanged; New Problems; New Opportunities ..... 91  
Comments By Type Of Plan ..... 94  
The “Uniform Table” (2001–2002 version) ..... 97

**PART VII: OBSOLETE ROTH CONVERSION RULES** ..... 98

1. The income and filing status tests (pre-2010 conversions) ..... 98  
2. Income averaging for 1998 Roth conversions ..... 101

## WARNING AND DISCLAIMER!

This Special Report contains material that is, for most people, out of date. The rules discussed in this paper are generally NOT applicable to today’s retirement benefits—although Congress has a tendency to revive obsolete rules so some if it MAY be currently relevant after all (see PART I(1)). The material produced here is taken, without change, from seminar materials, earlier editions of *Life and Death Planning for Retirement Benefits*, and other publications that were current when produced. Except with respect to QCDs (see PART I(1)) these materials have NOT been updated to the date of publication of this Special Report. Accordingly, this Special Report is intended to be used solely as a starting point for research in advising their clients regarding “grandfathered” benefits and in computing minimum required distributions for years prior to 2003.

## ABBREVIATIONS AND SYMBOLS

¶ Refers to a section of the author’s book *Life and Death Planning for Retirement Benefits*. It may refer to the applicable section of the current edition of the book (7<sup>th</sup> ed. 2011) or it may indicate an earlier edition.

§ Refers to a section of the Code unless otherwise indicated.

AGI	Adjusted gross income.
Code	Internal Revenue Code of 1986, as in effect at the time the applicable section was written.
DB	Designated Beneficiary.
EGTRRA	The Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107-16).
ERISA	Employee Retirement Income Security Act of 1974.
IRA	Individual retirement account or individual retirement trust under § 408 or § 408A.
IRD	Income in respect of a decedent.
IRS	Internal Revenue Service.
MAGI	Modified adjusted gross income.
MDIB	Minimum distribution incidental benefit (rule).
MRD	Minimum Required Distribution.
P	Participant; the owner of an IRA or the employee who has benefits in a QRP or 403(b) plan.
PLR	IRS private letter ruling.
PPA '06	The Pension Protection Act of 2006 (Pub. L. 109-280).
Prop. Reg.	Proposed Treasury Regulation.
QCD	Qualified Charitable Distribution.
QRP	Qualified Retirement Plan.
RBD	Required Beginning Date.
Reg.	Treasury Regulation.
S	The participant’s spouse or surviving spouse.
TEFRA	The Tax Equity and Fiscal Responsibility Act of 1982.
TRA '84	The Tax Reform Act of 1984.
TRA '86	The Tax Reform Act of 1986 (Pub. L. 99-514).
WRERA	The Worker, Retiree, and Employer Recovery Act of 2008 (Pub. L. 110-458).

## **PART I: INCOME TAXES: QCDS; SPECIAL AVERAGING**

This PART I explains the “qualified charitable distribution” (QCD) deal for IRA owners over age 70½ that allows them to transfer up to \$100,000 per year directly from their IRAs to charity. At the time the 7<sup>th</sup> edition of *Life and Death Planning for Retirement Benefits* went to the printer (11/2010), this deal had expired (as of 12/31/09), so details were left out of the book. Now it has been revived for 2010 and extended through 2011 by the “2010 Tax Relief Act.” See Item #1 below.

This PART I also explains the “special averaging deal” for certain “lump sum distributions” of benefits of certain individuals born before 1936; see Item #2 below.

### **1. Qualified Charitable Distributions, 2006–2011 (and beyond?)**

For tax years 2006–2009, individuals who were over age 70½ were permitted to make charitable gifts directly from their IRAs, without having such gifts be includible in their gross income. The availability of “QCDs” has been revived for 2010 and extended through 2011 by the “2010 Tax Relief Act” enacted in December 2010. See ¶ 7.6.10 below.

#### **7.6.08 Qualified Charitable Distributions**

§ 1201 of PPA '06 created a way to avoid *some* of the drawbacks of lifetime giving with retirement benefits discussed at ¶ 7.6.01 of *Life and Death Planning for Retirement Benefits*. Under § 408(d)(8), added by PPA '06, an IRA could make a “qualified charitable distribution” (QCD), which is a transfer directly from the IRA to a charity; the QCD would be excluded from the IRA owner’s income. Here are the limitations and restrictions on QCDs as contained in § 408 or in Notice 2007-7, 2007-5 I.R.B. 395, Part IX:

- A. When.** Originally enacted as a temporary measure (good for IRA distributions in 2006 and 2007 only), this was extended in late 2008 for two more taxable years (2008 and 2009). § 408(d)(8)(F). QCDs were extended *again* (for 2010 and through 2011) under the “2010 Tax Relief Act” enacted in December 2010; see ¶ 7.6.10 of this Special Report, below.
- B. How much.** The QCD income exclusion is limited to \$100,000 per year. § 408(d)(8)(A). The limit is per IRA owner, not per IRA. “For married individuals filing a joint return, the limit is \$100,000 per individual IRA owner.” Notice 2007-7, A-34.
- C. Which plans.** QCDs may be made from IRAs only. You cannot have a QCD from a QRP, 403(b) plan, 457 plan, or ongoing SEP or SIMPLE. An “ongoing” SEP or SIMPLE in any particular year is one that receives an employer contribution in such year. Notice 2007-7, A-36. QCDs may be made from Roth IRAs (to the extent the distribution would be included in the owner’s gross income; see “D”), but Roth IRAs are not a favorable choice as a source of charitable gifts. § 408(d)(8)(B).
- D. Which IRA assets.** The QCD must be a distribution that would otherwise be includible in the taxpayer’s gross income. § 408(d)(8)(B). Thus, a qualified distribution from a Roth IRA

(see ¶ 5.2.01 of *Life and Death Planning for Retirement Benefits*) could not be a QCD because a qualified Roth IRA distribution is nontaxable. What if the participant causes a transfer to be made to a charity from a traditional IRA that contains both pre-tax and after-tax money (basis)? See “H” below.

- E. Who.** The IRA owner (or beneficiary; see Notice 2007-7, A-37) must be age 70½ or older to have a QCD made from his IRA (or his inherited IRA). § 408(d)(8)(B)(ii). This is, so far, the only tax provision that has made the age 70½ “birthday” itself a significant event; minimum required distributions are based on the YEAR the participant reaches age 70½, not the DAY he reaches that age. Someone who reaches age 70½ on (say) December 30 could have a tough time getting his IRA provider to make the QCD on the last day of the year. It would have been easier for all concerned to allow QCDs to occur anytime during or after the calendar year the individual reaches age 70½—but that’s not what Congress provided.
- F. Which charities.** A QCD can be made to any charity EXCEPT a donor-advised fund, a supporting organization (§ 509(a)(3)), or certain private foundations. § 408(d)(8)(B)(i). Also, there is a requirement that the QCD must be a contribution that would be 100 percent deductible if paid from the owner’s nonIRA assets, so a split-interest gift will NOT qualify. Thus, QCDs cannot be made to a charitable remainder trust, pooled income fund, or charitable gift annuity, or in exchange for any consideration. Note that in determining whether the gift would be 100 percent deductible if made with nonIRA assets the percentage-of-income limits in § 170(b) are ignored. § 408(d)(8)(C).
- G. Income tax treatment.** The QCD is excluded from the individual’s gross income for all purposes. Notice 2007-7, A-34. Thus it cannot be counted as part of the individual’s gross income for purposes of applying the percentage-of-income limits in § 170(b) with respect to his other charitable gifts. Of course, there is no income tax deduction for the QCD. Notice 2007-7, A-39.
- H. QCDs deemed to come first from pretax money in IRA.** There is a special basis recovery rule for QCDs. Normally, any IRA distribution carries out proportionate amounts of the “pretax” and “after-tax” money in the individual’s IRA (with all of his IRAs being treated as single account for purposes of determining the proportions). See § 408(d)(1), (2), § 72(e)(2)(B), (5)(A), (5)(D)(iii), and (8)(B). Ed Slott, CPA, one of America’s leading IRA experts and author of several books on retirement distribution planning and publisher of *Ed Slott’s IRA Advisor* newsletter, calls this the “cream-in-the-coffee rule.” See ¶ 2.2.06–¶ 2.2.10 of *Life and Death Planning for Retirement Benefits*. Once after-tax money (cream) has been combined with the pretax money (coffee) in your IRA, every “sip” (distribution) taken from your IRA will contain some cream and some coffee. However, QCDs are one of the few exceptions to the cream-in-the-coffee rule: QCDs are deemed to come out of the IRA’s pretax money first. § 408(d)(8)(D).

**Burton Example.** Burton is a charitably-inclined individual age 71 who does not like to pay taxes. He happens to own a \$70,000 IRA with a \$20,000 basis resulting from nondeductible contributions

in prior years. In 2009, he directs the IRA provider to transfer \$50,000 from the IRA to the Santa Fe Opera Company, his favorite charity. This is a QCD, so the \$50,000 is deemed to come from the IRA’s pretax money “first.” Now he is left with a \$20,000 IRA which is 100 percent after-tax money. He converts this small “stub” IRA to a Roth IRA tax-free (if he is eligible). If he is not eligible to convert it to a Roth, he cashes it out tax-free instead.

### 7.6.09 *Planning uses and pitfalls of QCDs*

- A. QCD can be an MRD.** A QCD will count as a distribution for purposes of determining whether an individual has fulfilled the MRD requirement. Notice 2007-7, A-42. This is consistent with Regs. § 1.401(a)(9)-5, A-9(a), and § 1.408-8, A-11(a), which state that, except as otherwise provided in A-9(b) or A-11(b) of such regulations, or as may later be otherwise provided by other IRS pronouncements, “all amounts distributed” from a plan or IRA “are taken into account in determining whether section 401(a)(9) is satisfied....” The charitable IRA rollover was an ideal way for a charitably-inclined individual over age 70½ to fulfill the MRD requirement. QCDs made in January 2011 can (at the taxpayer’s election) be counted towards the MRD for 2010; see ¶ 7.6.10 below.
- B. Mixing up QCDs and MRDs.** Someone who had already taken his MRD for the year in cash will not be able to use a later QCD to fulfill his MRD requirement for that year; he cannot roll the already-taken MRD back into the IRA (to enable him to use a QCD instead) because MRDs are not eligible rollover distributions. See ¶ 2.6.03 of *Life and Death Planning for Retirement Benefits*. He can still make a QCD from his IRA; it just will not be his MRD. People will get confused about the MRD/QCD relationship. The two things have nothing to do with each other (other than the fact that a QCD counts towards the MRD, to the extent the MRD has not already been taken). A person can make QCDs of up to but not more than \$100,000, *regardless* of: whether his MRD for the year is more or less than \$100,000; *regardless* of whether he has already taken the MRD; and *regardless* of what other distributions he has taken or later takes from the IRA.
- C. Advantages of the QCD.** The QCD eliminates *some* of the problems that arise when using IRA distributions to make lifetime charitable gifts (see ¶ 7.6.01 of *Life and Death Planning for Retirement Benefits*). A QCD does not increase AGI and therefore does not: decrease the deductibility of medical expenses or miscellaneous itemized deductions; increase the taxability of Social Security benefits; increase the reduction of other itemized deductions under § 68(a); increase Medicare premiums; or increase state income taxes (in a state that uses federal AGI as the basis for computing state income tax but does not allow a charitable deduction). Since there is no itemized charitable deduction involved, the gift does not “count” for purposes of the percentage-of-income limits in § 170(b); does not get reduced by § 68(a); and is excluded from income even for someone who does not itemize deductions.
- D. Fulfilment of pledge.** A QCD is considered a payment “to” the participant for purposes of the prohibited transaction rules. Thus, it is not a prohibited transaction even if it is used to fulfill a pledge to the charity. Notice 2007-7, A-44.

**E. Drawbacks, problems, and what will go wrong.** QCDs are allowed only for direct transfers from the IRA to one of the permitted types of charitable recipients. If the money is first distributed to the participant, then donated to charity, it is not a QCD. While it might appear desirable for an over-age 70½ individual to use QCDs to fund all of his charitable contributions, there will be practical limits on this: Presumably, IRA providers will start charging “distribution fees” or setting minimum distribution amounts if they are asked to issue dozens of tiny QCDs. Finally, other requirements for charitable contributions still apply! Thus the donor must still obtain a receipt from the charity and a confirmation that there was no consideration received in exchange for the donation.

#### ***7.6.10 Extension of QCDs through 2011; special rule for January 2011 QCD***

For the first 11½ months of 2010, the status of QCDs was the entire provision § 408(d)(8) has expired at the end of 2009, and thus it appeared that QCDs were not permitted for 2010. § 725 of the “2010 Tax Relief Act” (“the Act”; enactment pending as of 12/17/2010) changes the expiration date from “December 31, 2009” to “December 31, 2011,” so when this provision becomes law as it apparently will QCDs will be revived and with us at least through 2011.

Because Congress recognizes that December 2010 is a little late to be adding a tax option to the Code *for the year 2010*, § 752(b)(2) of the Act contains a very “Special Rule” regarding QCDs: “At the election of the taxpayer,” any QCD made in **January 2011** “shall be deemed to have been made on December 31, 2010” for two purposes:

- First, for purposes of the individual’s compliance with the minimum distribution rules. Thus, for example, if an over-age-70½ individual has not taken his 2010 IRA minimum required distribution (MRD) by December 31, 2010, normally such individual would owe a 50 percent penalty on the amount that he was supposed to withdraw in 2010 but didn’t. See § 4974. But under the 2010 Tax Relief Act provision, this individual can transfer funds (up to \$100,000) directly from his IRA to a qualifying public charity *in January 2011* and elect to have that transfer “count” towards his 2010 MRD, thus eliminating any otherwise applicable penalty to that extent. The IRS is to issue forms and rules for these elections.
- Second, regardless of whether the individual needs to have his January 2011 QCD “count” to fulfill his 2010 MRD, by making the election under § 725(b)(2) of the Act, the individual can actually give up to \$200,000 to charity from his IRA in 2011; the amount so transferred in January 2011 would be treated as if it had been transferred December 31, 2010, for purposes of applying the \$100,000-per-year limit.

[end of discussion of “QCDs”; end of “sample pages”]