

Dear estate planning professional:

"IRAs at 70½" is an **excellent new booklet** by Barry Picker CPA. It will explain clearly to your estate planning clients the choices they face at age 70½ regarding their IRAs, and also contains a practical checklist. I recommend sending a copy to clients when they turn 70½ (or better yet when they turn 69½). 24 pages; \$14.50. Call (718) 934-4300 or buy on line at [www.BPickerCPA.com](http://www.BPickerCPA.com).

What's **new at my website**, [www.ataxplan.com](http://www.ataxplan.com): back issues of Choate's Notes; and "Ask Natalie," a collection of questions submitted at seminars that I didn't have time to answer at the seminars, and so am answering on the web. If I didn't get to your question, check "Ask Natalie." My site has been named one of the "best internet resources for financial professionals" by [www.morningstaradvisor.com](http://www.morningstaradvisor.com).

The 1992 edition of "The Harvard Manual on **Tax Aspects of Charitable Giving**," by the late David M. Donaldson and Carolyn M. Osteen (both lawyers at Boston's swankiest law firm, Ropes & Gray) was a best seller for the Harvard University Office of Planned Giving. Now Osteen and her colleagues have issued a new updated edition. At 3½ pounds and \$105, it both weighs and costs more than the original, but it will be invaluable to any lawyer looking for detailed advice (with forms and citations) on charitable giving techniques—written by lawyers who do this stuff every day for the wealthiest donors. To order, call 800-446-1277; by check only.

In what they claim were unrelated moves, two top estate planning gurus, Larry Katzenstein and Howard Zaritsky, marked the new millennium by shaving their respective **beards**. Now each will have to rely solely on his personal charm and brilliance instead of the instant air of wisdom conferred by well-trimmed whiskers. Who's next—Santa Claus? Fidel Castro? Steve Leimberg?

Jonathan Blattmachr and I are working on a **new software product**, called BenDesi, to assist professionals in planning for clients' retirement benefits. BenDesi is produced by The Technology Group, the same software pros who make Jonathan's magnificent estate planning software, "Wealth Transfer Planner." The first piece of BenDesi, the "DistribuGuide," is ready now. If you represent the estate or heirs of a decedent who owned an IRA or other retirement plan, this interactive questionnaire will tell you when distributions must commence from the decedent's plan and what payout options the law allows for your situation. Read about a special introductory offer for the DistribuGuide in the enclosed letter from The Technology Group, or come and see it live at the "LawOnTheWeb" booth at the Heckerling Institute in Miami in January 2001.

**Attention financial planners:** you can get continuing education credits, approved by the ICFP, by reading my book *Life and Death Planning for Retirement Benefits*. Buy the book and self-test from Beacon Hill Financial Educators for \$260, or if you already have the book they will administer the test and you pay only for the test. Visit [www.bhfe.com](http://www.bhfe.com) for details.

Until the next issue,

--Natalie B. Choate

**The Forgotten Grandfathers**

A recent phone call began: “I inherited an IRA when my Dad died, and I rolled it over into my own IRA, to which I have made other contributions, because both my bank and my cpa told me I could do that. Then someone told me I *shouldn't* have done that, it was an illegal rollover.” Before I could respond to this caller by telling him about all the penalties he faced, he continued: “So I was very glad to read on page 113 of your book that my rollover was perfectly legal because it took place prior to 1984, and back then such rollovers [by a non-spouse beneficiary] were permitted!” Good thing this caller had read my book because I had forgotten all about this grandfather rule for pre-1984 rollovers. So to cover other possible memory lapses, here is a quick rundown of other “grandfathers” who, though old, are still active and may have a bearing on your client’s retirement benefits:

Five year averaging is gone as of 1/1/2000, but two grandfather “deals” are still available for lump sum distributions from qualified plans. 10-year averaging is available for those born before 1936; and a maximum 20% tax (“capital gain rate”) is available for pre-1974 balances for those who participated in their retirement plans before 1974. See *Life and Death Planning for Retirement Benefits* (3rd ed., 1999) (pages 107-111). A problem with these two grandfather rules is that it is not entirely clear which of the many requirements that applied to five year averaging still apply to these deals. Some tests (such as “no prior rollovers of distributions from this plan,” § 402(c)(10)) were repealed along with five year averaging, but may still be recited as requirements in IRS form 4972. If your client may qualify for 10-year averaging or the 20% max tax on pre-1974 benefits, you may need to do some homework to figure out exactly what the requirements are.

TEFRA 242(b) elections are coming home to roost. Anyone currently advising a client who is relying on a TEFRA 242(b) election needs to independently examine the facts and the law to be satisfied that the client really does qualify. There are lots of purported 242(b) elections out there that do not meet the strict requirements of IRS Notice 83-23. See *Life and Death* page 379. Another 242(b) problem is, what happens when the 242(b)-elected client dies leaving the grandfathered benefits to his spouse? Can she roll them over, or is a rollover deemed a revocation of the 242(b) election (triggering recapture)? An attorney who had this problem concluded (and I agree) that such a rollover did *not* constitute a revocation of the 242(b) election, if the 242(b) election called for a lump sum distribution to the spouse on death, since spousal rollovers were permitted prior to 1984. See IRC § 402(a)(7) as it existed prior to amendment by § 522(c) of TRA '84.

I wonder if there are still any participants around who terminated service prior to 1985 but are still receiving benefits from their old plan without having changed the form of benefit payment. If that describes your client, the remaining benefits still qualify for (all or part of) the old federal estate tax exclusion for retirement plan benefits. Think about that before rushing to change the form of benefit in any way! See *Life and Death* page 386.

Finally, a 403(b) plan participant has one set of minimum distribution requirements applicable to his pre-1987 plan balance and another to post-1986 contributions and accumulations, if the 403(b) administrator reports those balances separately. With the phenomenal investment growth experienced by many plans since 1987, the special treatment of pre-1987 balances may be of declining significance. See pages 382-386 of *Life and Death* for further discussion.