Vol. 8, No. 2 **Choate's Notes** Summer 2006

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

Dear estate planning professional:

At last! The 6th edition of *Life and Death Planning for Retirement Benefits* has gone to the printer. See flyer enclosed. A year overdue, but worth waiting for. Now I can resume other activities such as sleeping, eating and breathing.

Must-have item for estate planners: **Jonathan Blattmachr playing cards**. Not for sale in any store unfortunately. You need a connection at Wealth Transfer Planning (www.ILSdocs.com), or cozy up to Nicole Splitter, WTP's rep, at one of the major estate planning seminars/trade shows such as Notre Dame, Southern California, or Heckerling. Speaking of which, I hope to see you at a **fall seminar**. I'll be in your neighborhood if you live in Philadelphia (9/7), Denver (9/14), Boston (9/15) or Holyoke (9/20), MA, Elmira, NY (9/21), Medford, OR (9/25), Indianapolis (9/28), Pittsburgh (9/27), South Bend, IN (10/5, 10/6), Albany, NY (10/17), San Diego (10/20, 10/21), St. Louis (10/24), High Point, NC (10/25), Atlanta (10/26), Baltimore (10/27), Nashville (10/30), Amelia Island, FL (11/3), Salt Lake City (11/4), or Las Vegas (11/9). For details on these upcoming speaking events, visit www.ataxplan.com.

Tax-Wise Retirement Distribution Planning, by Robert A Fishbein, challenges the conventional wisdom, "Always tap tax-deferred retirement plans last." Apparently that approach does NOT always produce the best result for all retirees. This well-written and thought-provoking study is distributed by Prudential Financial, so call your friendly Prudential agent to get a copy.

ProTracker Advantage V4 is a most interesting software program for financial planners. It's a contact manager database type program for keeping track of your clients…ok there's lots of contact management programs out there, but this one may be the only one that integrates required minimum distribution (RMD or MRD) compliance into the program. It shows you a screen of all your clients who are subject to RMDs (including beneficiaries of inherited IRAs—not just over-70½ IRA owners, which are the only ones the IRA providers track). The program calculates each client's RMD for the year and shows you how much has been distributed so far, so at an instant you can see which clients you need to follow up with to complete the year's RMD. Though I didn't test the program myself, it looks very user friendly…clear easy instructions in English etc. Designer Warren Mackensen's service in a Navy submarine apparently helped prepare him to understand RMD compliance (just kidding Warren!). Find out more at www.protracker.com.

With publication of the new 6th edition of *Life and Death Planning for Retirement Benefits*, I've added a new feature to the www.ataxplan.com website, the TOC-I-TOA. This is a .pdf document containing the entire **T**able **O**f **C**ontents, **I**ndex, and (soon) **T**able **O**f **A**uthorities for the book. Print it out and have a look to see whether *Life and Death Planning* contains information you need. Even better: once you buy the book, if you download the TOC-I-TOA to your hard drive, you can do word searches in it; that might help you get to the info you need in the book even faster.

Until the next issue,
--Natalie B. Choate

Pension Protection Act of 2006

Congress has enacted the Pension Protection Act of 2006 (which is hundreds of pages long) and President Bush is expected to sign it soon. Most of the new law deals with funding and administration of defined benefit plans, but there are two long-awaited rollover goodies for estate planners: the charitable IRA rollover bill (lite), and post-death rollovers for nonspouse beneficiaries.

Charitable IRA rollovers: Not quite the ultimate charitable IRA rollover that the nonprofit community dreams of, but it's a good start: Money can be distributed from an IRA directly to a charity, and the distribution will be excluded from the IRA owner's income. Now here are the limitations and restrictions on these new "Qualified Charitable Distributions" (QCDs):

When: This is a temporary measure, good for 2006 and 2007 only.

Who: The IRA owner must be age 70½ or older. This is the first 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. This should be an ideal way for wealthy individuals to fulfill the MRD requirement while helping a favorite charity.

How much: The QCD income exclusion is limited to $100,000 per year.

Which charities: A QCD can be made to any charity EXCEPT a donor-advised fund (which is now a defined term in the Code, for the first time), a supporting organization, or certain private foundations. Also, because of the requirement that the QCD must be a contribution that would be 100% deductible if paid from the owner's nonIRA assets, split-interest gifts will NOT qualify. Thus, QCDs cannot be made to a charitable remainder trust, pooled income fund, or charitable gift annuity. (In determining 100% deductibility, you do not have to look at the "percentage of income" limitations however.)

Which plans: This is ONLY for distributions from IRAs (other than SEPs and SIMPLEs).

Which assets: The QCD must come from pre-tax money; but for this purpose, the QCD is deemed to come first from the owner's pre-tax assets in all of his aggregated IRAs until that has been used up. This is an exception to the usual "cream-in-the-coffee" rule for IRA basis recovery.

Beneficiary rollovers: After 2006, a nonspouse beneficiary can transfer funds from an inherited qualified retirement plan (QRP) account, such as a 401(k) plan, by means of a direct rollover (only), to an "inherited IRA" established to receive this distribution in the name of the deceased participant and payable to the same beneficiary. This is good news for any beneficiary who inherits benefits in a QRP that does not allow the life expectancy payout (or that is terminating). The beneficiary can preserve the stretch payout and will not be forced to take a lump sum.

Limitations: This type of transfer can be made ONLY by direct rollover, and ONLY by a beneficiary who qualifies as a "Designated Beneficiary" (or, says the law, a trust for the benefit of Designated Beneficiaries). When QRP benefits are payable to the participant's estate, or to a trust that does not qualify as a see-through trust, the estate or trust will not be able to transfer those benefits to an inherited IRA. Even though the estate or trust might like to use the limited deferral that is allowed under the "no-designated beneficiary" rules, i.e., the 5-year rule or the remaining life expectancy of the participant (depending on whether the participant died before or after his RBD), such an estate or trust will still be stuck with a lump sum distribution if that's all the plan allows.

Action item: Any nonspouse designated beneficiary who has inherited a QRP that pays benefits only in lump sum form should try to delay the distribution until 2007, then use the new rollover provision to preserve a life expectancy payout.

–Natalie Choate