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Boston Tax Institute

CONTINUING PROFESSIONAL EDUCATION CREDITS INFORMATION
4-hour webinar: Natalie B. Choate, Esq.: June 5, 2020
"Estate Planning and Drafting for Retirement Benefits after SECURE"

Attendance at this seminar is offered for lawyers, accountants, financial planners, trust officers, and other professionals who advise clients regarding estate planning for their IRAs and other retirement benefits. The seminar assumes that the attendee is familiar with basic estate planning concepts and with the income and transfer tax systems applicable to individuals. The goal is to build upon that knowledge by adding specialized information the professional will need to properly plan for the client's retirement plan benefits.

The course is intended to qualify for continuing professional education (CPE) credits. However, since the webinar is offered nationwide and to multiple professions, it is not possible for the sponsor to apply for such credits with every accrediting body. The following information (teacher's credentials; detailed description of topics covered, and time frame) should help those professionals who are able to self-certify regarding their CPE credits.

Speaker's experience/credentials

Natalie B. Choate is an estate planning attorney with the law firm of Nutter McClennen & Fish LLP in Boston Massachusetts. She is admitted to the Massachusetts bar. After over 4 decades of active practice, her time is now primarily devoted to teaching and writing about the topic of this seminar. Her book *Life and Death Planning for Retirement Benefits* is a major resource for all tax and investment professionals seeking information about this topic. She has taught 100s of professional seminars on this topic including appearances in all 50 states, including multiple appearances at the University of Miami Heckerling Institute on Estate Planning, the Notre Dame (Law School) Tax and Estate Planning Institute, and other major tax institutes. She is a graduate of Radcliffe College and Harvard Law School, and editorial advisor for *Trusts & Estates* magazine, a fellow of the American College of Trust & Estate Counsel (ACTEC) and former chair of ACTEC's Estate Planning for Retirement Benefits Subcommittee.

Timeline: Topics to be covered in the seminar, hour by hour

Here is the time line showing topics to be covered during the 4-hour Webcast:

I. Hour 1: The unique asset and how it interacts with the estate plan.

A. Retirement plan contrast with client's other assets

1. "Income in respect of a decedent"—no "stepped-up basis"
2. Minimum distribution rules
3. Federal vs. state law: spousal rights, creditors, taxes
4. Probate vs. contract law: the beneficiary designation
5. ERISA considerations

6. Different types of plans

B. The required minimum distribution (RMD) rules pre-SECURE
   1. Difference between "designated beneficiary" and "no DB"
   2. Importance of "designated beneficiary"; how to get one
   3. The four pre-SECURE RMD options:
      a. Spousal "special deal" life expectancy payout
      b. Life expectancy payout for nonspouse individual
      c. 5-year rule for "no DB" (death before "required beginning date")
      d. Participant's life expectancy rule for "no DB" ((death after "required beginning date")
      e. IRS refinements: e.g. the "longer of" rule
   4. For deaths after 2019: What SECURE did and didn't do
      a. Definition of designated beneficiary: no change
      b. Rules applicable to "no DB": no change
      c. Rules now applicable to designated beneficiaries:
         (1) Life expectancy replaced with 10-year rule for MOST DBs
         (2) Modified life expectancy payout for 5 categories of "eligible designated beneficiaries"
   5. SECURE's RMD payout requirements:
      a. Spousal "special deal" life expectancy payout (flips to 10-year rule)
      b. Life expectancy payout for disabled, chronically ill, or not-more-than-10-years-younger beneficiary (flips to 10-year rule)
      c. Life expectancy payout for minor child of participant until "majority" (then flips to 10-year rule)
      d. 10-year rule for all other designated beneficiaries (works like the old 5-year rule)
      e. 5-year rule for "no DB" (death before "required beginning date")
      f. Participant's life expectancy rule for "no DB" (death after "required beginning date")
   6. How these rules work for your client's retirement benefits:
      a. The 10-year rule
      b. The 5-year rule
      c. The Life Expectancy payout—nonspouse
      d. The Life expectancy payout—surviving spouse
      e. Effect of flipping to the 10-year rule
      f. Effect on pre 2020 deaths

II. Hour 2: How trusts fit into this picture

A. How does a trust qualify as a "designated beneficiary"?
   1. The IRS's five "minimum distribution trust rules"
      a. 3 "easy" rules: valid under state law, irrevocable, copy to plan
      b. 2 "harder" rules: All beneficiaries must be individuals, oldest beneficiary must be "identifiable"
   2. Effect of qualifying as a designated beneficiary

a. Pre-SECURE: Life expectancy payout based on life expectancy of oldest trust beneficiary
b. Post-SECURE: 10-year rule applies–unless "eligible designated beneficiary" treatment can be used.

3. Can a trust qualify for "eligible designated beneficiary" treatment?
   a. This is the most significant new planning issue under SECURE
   b. Based on existing pre-SECURE regulations which have not been overruled by SECURE, we have SOME answers.
   c. Based on SECURE, we also have an answer regarding certain trusts for disabled/chronically ill (D/CI) beneficiaries.

B. A trust with "multiple beneficiaries" can take one of three forms (or be a combination of them):
   1. "Vertical" shares for different beneficiaries
   2. "Horizontal" interests (sequential by time; e.g., life income to)
   3. "Muddled" interests (multiple beneficiaries sharing the same fund at the same time—"spray" trust)
   4. Post-SECURE estate planners MUST understand the differences between these 3 types of "multi-beneficiary trusts" and be able to apply SECURE's options to each type.

C. Planning options for the surviving spouse
   1. Name the spouse outright as sole beneficiary:
      a. Spousal rollover: Unaffected by SECURE.
      b. Life expectancy payout (as an eligible designated beneficiary) (EDB) with the following two special spousal "deals":
         (1) Payments do not have to commence until decedent would have reached age 72
         (2) Spouse's life expectancy is recalculated annually
      c. Note that these options are NOT ca
   2. Name a "conduit trust" for spouse as sole beneficiary:
      a. Explanation of the "conduit trust: Reference to Treas. Reg. Example 2. All plan distributions received by the trust during life of surviving spouse must be forthwith paid out to the spouse.
      b. Example 2 states that spouse is deemed to be sole beneficiary of the trust and sole beneficiary of the plan....therefore the trust is entitled to the "special spousal deals."
      c. Example 2 was extended to other beneficiaries besides spouse, so that if there was a conduit trust for (e.g.) a child, the child was deemed sole beneficiary of the trust and plan so older remainder beneficiaries were disregarded in determining the applicable distribution period.
      d. Nothing in SECURE changed the payout options for spouse named as sole beneficiary of the plan. Nothing in SECURE changed the definition of designated beneficiary, of which the IRS's trust rules

are a part. Therefore this regulation still applies:

e. Conduit trust for surviving spouse DOES receive the same EDB treatment as spouse named directly as beneficiary.

3. Name an "accumulation trust" for the sole life benefit of the surviving spouse as beneficiary. Under an accumulation trust, the trustee is NOT required to pass all plan distributions out to the individual beneficiary. Rather, the trustee may accumulate distributions for later distributions to others. Typical example: "Pay income to my spouse for life, and on spouse's death distribute principal to our issue."
    a. This trust is NOT entitled to the special spousal deals, even though the spouse is sole LIFE beneficiary because spouse is not considered the SOLE BENEFICIARY of the trust. See Treas. Reg. § 1.401(a)(9)-5, A-7(c)(3), Example 1.
    b. This trust (if it qualifies as a see-through) is subject to 10-year rule.

D. What we need to know, therefore:
    1. Difference between a conduit trust (guaranteed DB status) and an accumulation trust (may or may not qualify as a see-through trust, so may or may not qualify for "DB status").
    2. How do you test, how do you tell the difference?

E. The six things you need to understand about trust income taxes
    1. Trust accounting: Income vs. principal; state law; governing instrument; interplay with income taxes.
    2. Trust income tax rates: Hit the highest bracket (37%) at $12,950. Vs. $622,000 for MFJ and $518,000 for single humans!
    3. Distributable net income and the DNI deduction.
    4. Pecuniary vs. residuary distributions.
    5. "Separate shares" rule for allocating DNI.
    6. Charitable gifts—No DNI deduction, comply with 642 instead!

III. **Hour 3: Planning for our other "designated beneficiaries" and "EDBs"**

A. Planning for the "plain old" designated beneficiary (PODB)
    1. 10 year rule: How it works if benefits paid to DB outright. DB gets outright control of all the money immediately, may or may not decide to defer/spread over 10 years.
    2. If benefits are paid to a conduit trust. DB gets outright control of all the money in 10 years. Trustee decides whether benefits are deferred/spread, but DB gets the $$ in no more than 10 years.
    3. If benefits are paid to a see-through accumulation trust: Grantor decides (through trust standards) when the DB gets control (e.g., at a certain age or never). But plan must be distributed within 10 years....and almost all plan distributions will be taxed at high trust tax rate if not passed out to the DB.
    4. If benefits are paid to a non-see-through-trust: Plan must be distributed within 5 years or over participant's life expectancy...Grantor retains total control (through trust terms)...and almost all plan distributions will be

taxed at high trust tax rate if not passed out to trust beneficiary(ies).

5. Does this unappealing menu get better for EDBs? We have already seen the "surviving spouse" menu....here are options for others:

B. EDB: Not more than 10 years younger individual (who is not the surviving spouse and who is not disabled)

1. Definition
2. Benefits paid outright to this EDB: get "old style" life expectancy payout (except flip to 10 years on EDB's death). EDB gets outright control of all the money immediately, may or may not decide to defer/spread over his/her life expectancy.
3. Benefits paid to conduit trust for this EDB: get "old style" life expectancy payout (except flip to 10 years on EDB's death). Trustee controls plan, but must pay out any distributions to the EDB. Trusteed IRA works the same. The EDB gets the RMDs (plus additional distributions if called for by the trust agreement—e.g. for health or support). Works well for e.g. a sibling or unmarried significant other.
4. Benefits paid to a see-through accumulation trust for this EDB does not get life expectancy payout under current rules. 10 year rule would apply.
5. Non-see through trust: 5 years or over participant's life expectancy.

C. EDB: Beneficiary who is "disabled" or "chronically ill"

1. Definition of disabled
2. Definition of chronically ill
3. Additional planning consideration: Whether the beneficiary qualifies for means-tested government benefits such as Medicaid health coverage.
4. Benefits paid outright to this EDB: get "old style" life expectancy payout (except flip to 10 years on EDB's death). EDB gets outright control of all the money immediately, may or may not decide to defer/spread over his/her life expectancy.
5. Benefits paid to conduit trust for this EDB: get "old style" life expectancy payout (except flip to 10 years on EDB's death). Trustee controls plan, but must pay out any distributions to the EDB. Trusteed IRA works the same. The EDB gets the RMDs (plus additional distributions if called for by the trust agreement—e.g. for health or support).
6. Benefits paid to a see-through accumulation trust for this EDB. Can qualify for life expectancy payout! Not an option for other classes of EDBs. Explain "applicable multi beneficiary trust" concept and rules enabling accumulation trust to qualify for life expectancy payout.

D. EDB: Minor child of the participant.

1. Child "loses EDB status" upon attaining majority at which time payout flips to 10-year rule.
2. Treasury can define "majority." To date (pre SECURE) they have added some guidance on this.
3. Choices limited and unsatisfactory.

4. Benefit outright to minor? Child gains outright control upon attaining majority, may or may not choose to defer distributions for 10 years.
5. Conduit trust for minor: qualifies for this "fake" life expectancy payout. Trustee can control the money for 10 years past majority but no later than age 28-36 (depending on ultimate definition of "Majority"), at which time child obtains outright control.
6. See-through accumulation trust for minor: Subject to 10 year rule, no life expectancy payout (under current rules).

E. The unknowns
1. IRS regulation dictates no "separate accounts" treatment for benefits left to a single trust. SECURE overrules this for certain trusts for disabled/chronically ill beneficiaries. Will IRS drop it for others too?
2. Treatment of rust for multiple beneficiaries if all of them are EDBs, e.g. life income to sister, remainder to brother (where both are not more than 10 years younger than participant).
3. Conduit trust for multiple minor children of participant...when does it flip to 10-year rule?
4. If participant dies after RBD leaving benefits to an EDB who is older than participant, does the "longer of" rule still apply?
5. Will Treasury eliminate the trust rule requiring giving copy of trust to plan administrator...or requiring oldest beneficiary to be "identifiable?"

F. Ways to "beat" or get around SECURE?
1. No: conduit trust for minor that flips to an accumulation trust upon majority
2. Charitable remainder trust
3. 678 grantor trust

IV. **Hour 4: Additional topics and new developments affecting retirement benefits**

A. CARES Act: Coronavirus related distributions receive special tax treatment

B. CARES Act: suspension of 2020 RMDs
1. What the law says
2. What to do for people who have already taken the 2020 RMD

C. Charitable giving with retirement benefits
1. Qualified charitable distributions (& effect of suspension of RMDs)
2. Naming charity outright (or through a DAF)
3. Charitable remainder trusts
4. If retirement benefits pass to charity through a family trust

D. Question and answer period.

E. Closing: The retirement benefits in the estate, after the client's death.
1. Ways to clean up/correct a mistaken or missing beneficiary designation
2. Transferring the retirement plan out of the estate or trust upon termination
3. 3 years of transition: 2019 (final year "age 70 ½" matters), 2020 (RMDs suspended), 2021 (new IRS life expectancy tables.