THE CHARITABLE GIFT PLANNER'S GUIDE TO THE Secure Act

INCLUDING 2022 PROPOSED REGS

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Two Disclaimers

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Part 1

Retirement Plan Assets Primer

PART 1

SECURE Primer

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Non-Charitable Estate Planning

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Charitable Estate Planning (Lifetime & Testamentary)

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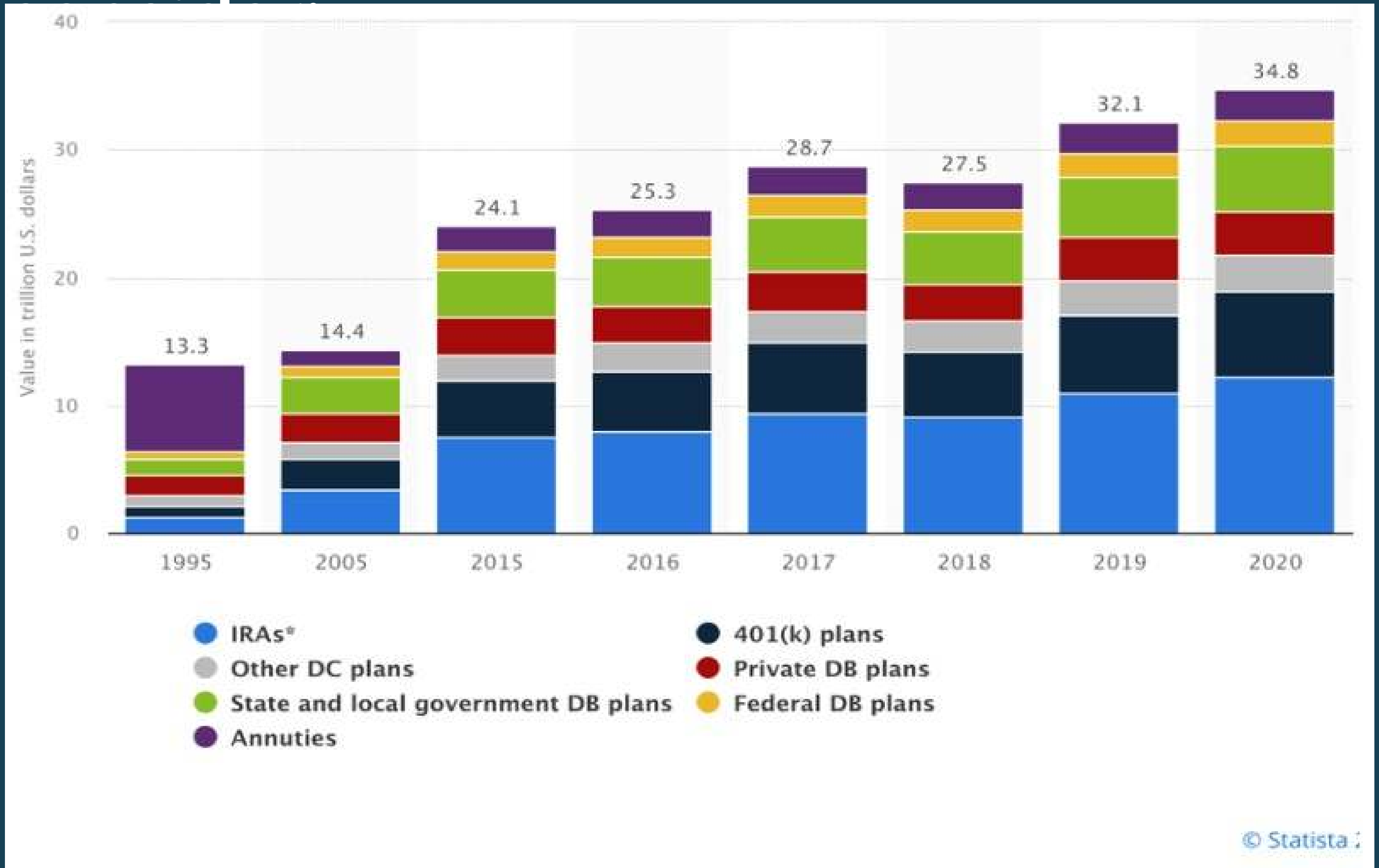
To understand this monumental change to estate planning,



In 1974, only 18% of all retirement assets were held in DC plans and IRAs (62% were in DB plans), and in 2019, more than 60% are in DC plans.

INVESTMENT COMPANY INSTITUTE, "THE U.S. RETIREMENT MARKET, FIRST QUARTER 2019" (JUNE 19, 2019). IN 1974 ONLY 18% OF THE $369 BILLION IN RETIREMENT ASSETS W IN DEFINED-CONTRIBUTION (DC) PLANS AND INDIVIDUAL RETIREMENT ACCOUNTS (THE OTHER 82% WAS IN DEFINED-BENEFIT PLANS), AND IN 2019, MORE THAN 60% ARE IN DC PLA AND IRAS, WHICH ARE WORTH APPROXIMATELY $30 TRILLION.

WHO (WHAT) IS AN IRA BENEFICIARY?

IRS Pub 590-B provides:

“If you inherit a traditional IRA, you are called a beneficiary. A beneficiary can be any person or entity the owner chooses to receive the benefits of the IRA after they die.“

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The following are essential vernacular, abbreviations, and acronyms that are part of estate planning for retirement assets.

After age 59 1/2 and before age 73
After age 59 1/2 and before age 73

Applicable Multi-Beneficiary Trusts
Applicable Multi-Beneficiary Trusts

"SECURE ACT 2.0"

ERISA
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ERISA plans
ERISA plans
ERISA plans
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ERISA plans

Income in Respect of a Decedent **(IRD)**
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Qualified Charitable Distributions (QCD)s
Qualified Charitable Distributions (QCD)s
Qualified Charitable Distributions (QCD)s

"Stretch" IRA
"Stretch" IRA
"Stretch" IRA

Disregarded

"Ghost Life Expectancy"
"Ghost Life Expectancy"
"Ghost Life Expectancy"

"Regular" Designated Beneficiary
"Regular" Designated Beneficiary
"Regular" Designated Beneficiary

"Inherited" IRA
"Inherited" IRA
"Inherited" IRA
"Inherited" IRA

"Applicable Denominator"

"5 & 10 -YEAR RULES"
"5 & 10 -YEAR RULES"
"5 & 10 -YEAR RULES"

Required Beginning Date (RBD)
Required Beginning Date (RBD)
Required Beginning Date (RBD)

Determination Date
Determination Date
Determination Date

Trust with a Power of Appointment

RMD TERMINOLOGY:

REQUIRED MINIMUM DISTRIBUTION

Expert attorney, ***Natalie Choate***, describes the new RMD "system" for beneficiaries as generally having two categories:

1

An annual distributions track:
What annual distributions are required after the participant's death if any?

2

An **"Outer Limit Year"** is the year that a final lump sum must be distributed to the primary beneficiaries.

Natlie on SECURE

"All pre-2020 estate plans need to be urgently reviewed in light of SECURE's changes. Many pre-2020 estate plans will not work as intended , some disastrously so."

The SECURE Act does not amend or replace

§ 401(a)(9)(B)(i) "ALAR" or

any of the existing regulations.

It does not change the definition of a designated beneficiary. Changes the "Life Expectancy Rule."

The SECURE Act adds a new section to 401(a)(9) and § 401(a)(9)(H).

401(a)(9)(h)(ii)Exception for eligible designated beneficiaries.—Subparagraph (B)(iii) shall apply only in the case of an eligible designated beneficiary."

THE 5 CATEGORIES OF ELIGIBLE DESIGNATED BENEFICIARIES:

1. Owner's Surviving Spouse
2. Owner's Minor Child
3. An Individual Who is Disabled
4. An Individual Who is Chronically Ill
5. Any Other Person Who is Less Than 10 Years Younger than the Decedent

Planning has become more complicated by adding five categories of eligible designated beneficiaries who aren't subject to the 10-year rule.

Those five categories have four sets of minimum distribution rules.

Example:

REQUIRED MINIMUM DISTRIBUTION
Updated for SECURE 2.0

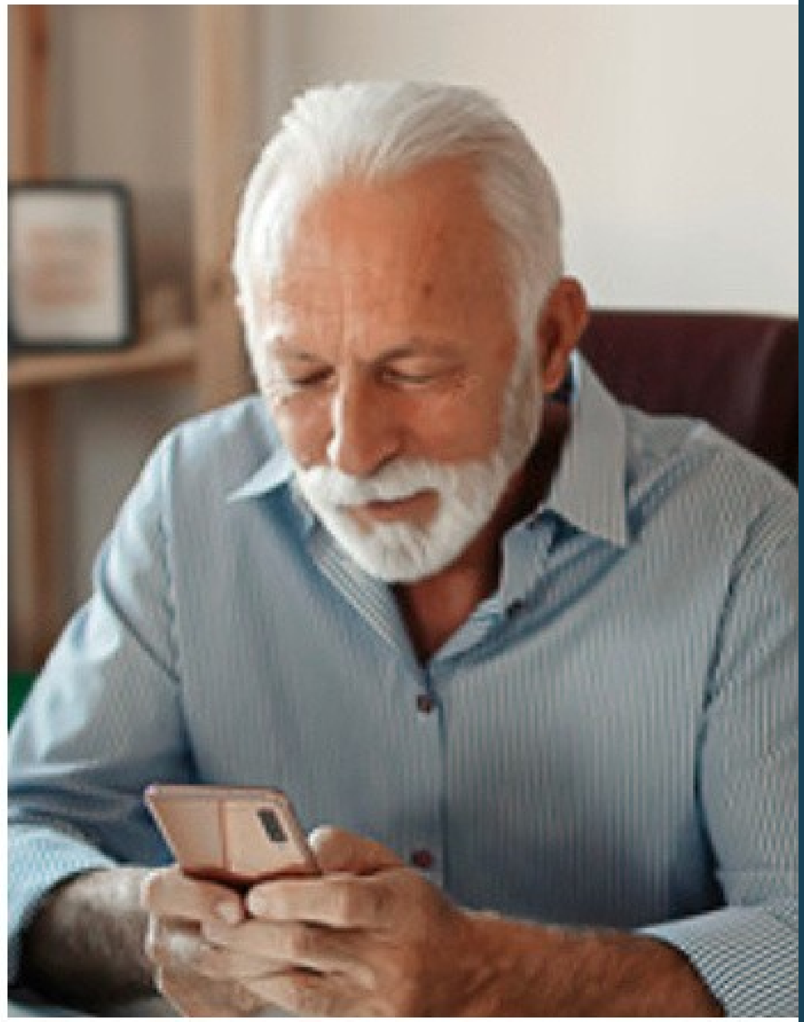
If the decedent died before their required beginning date (April 1 after the participant becomes age 73), designated beneficiaries could delay their minimum distribution payments until the 10th anniversary of the participant's death. Full distribution by the end of the calendar year that includes the tenth anniversary of the death (e.g., 2023 deaths= 12/31/33 liquidation)

Because SECURE didn’t repeal rules, if a decedent dies after RBD, a regular designated beneficiary must begin taking life expectancy payout for the first nine years and 100% final distribution in year 10.
(IRC 401(a)(9)(B)(i))

EXAMPLE OF TWO DIFFERENT OUTCOMES FOR THE SAME DECEDENT

Ray Jackson is 75 and has a traditional IRA ("IRA A"). Ray dies and leaves the IRA for his daughter Lori age 48. Lori does NOT qualify to stretch payments as an eligible designated beneficiary (EDB) over her lifetime, so she must apply the 10-year rule. The entire IRA must be emptied by the end of the tenth year after the year of death. Additionally, Ray died after his required beginning date ("RBD" – April 1 of the year after he turned 72), so Lori must also take the required minimum distributions (RMDs) in years 1 – 9 of the ten years.

The above is straightforward and recognized as the proper interpretation of the proposed SECURE Act regulations.
But now, we add another common scenario that increases the complexity.



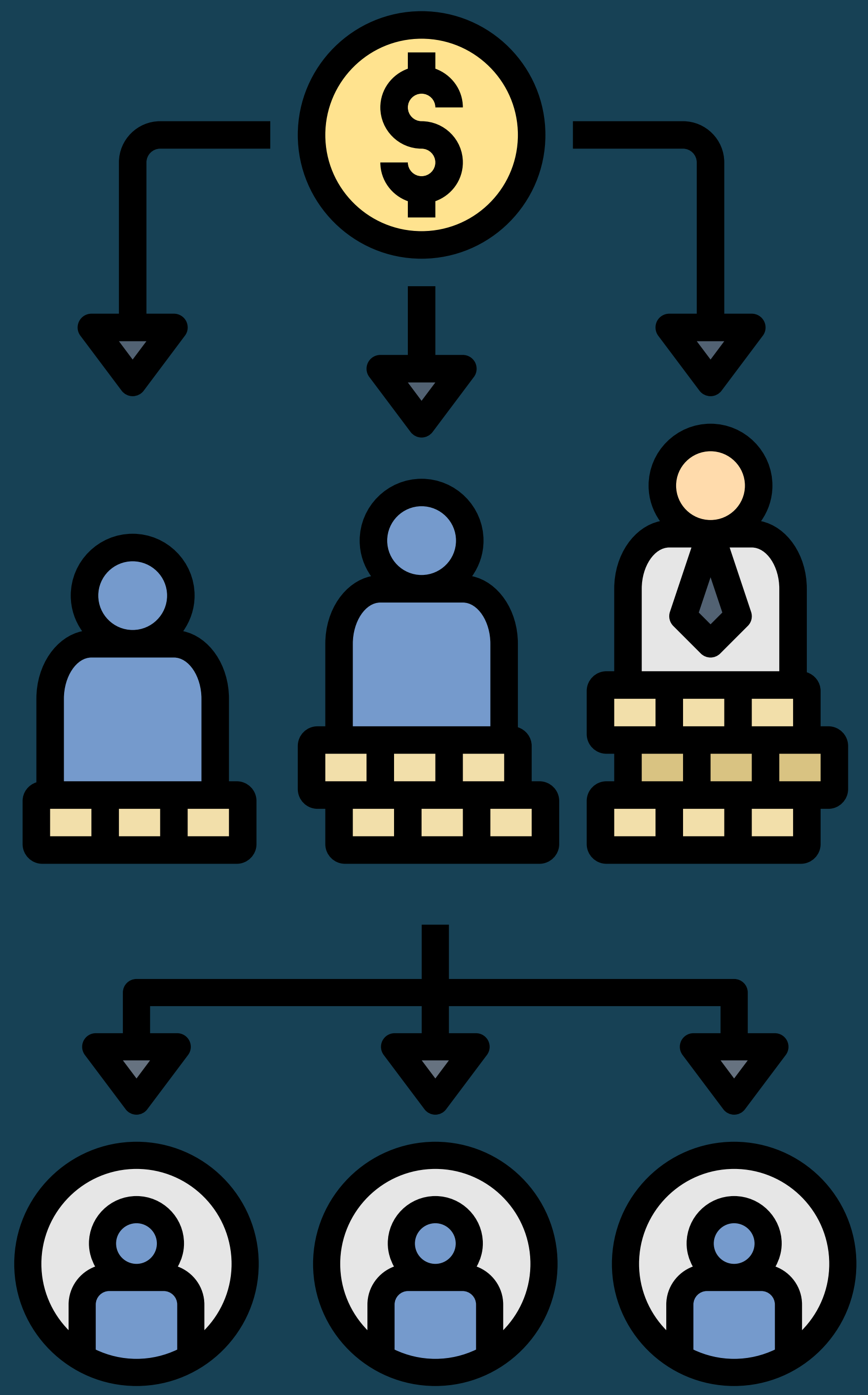
EXAMPLE OF TWO DIFFERENT OUTCOMES FOR THE SAME DECEDENT

continued....

Ray also had a 401(k), and he was currently employed until the day he died. Since the 401(k) plan adopted the “still-working exception” and Ray did not own more than 5% of the company, his plan RBD would not have been until April 1 of the year after he separated from service (had he lived). Ray was not yet taking RMDs from the 401(k). Lori was the beneficiary of the plan. Since Lori is not an EDB, she must apply the 10-year payout rule to the 401(k). However, since Ray died before taking any of his plan’s RBD, Lori will NOT have RMDs in years 1 – 9 within the ten years.

Beneficiary Options:

This is an important insight, but let's say Lori elects to roll the 401(k) assets into an inherited IRA ("IRA B"), which is a common action. Lori now has two inherited IRAs from the same decedent. While both inherited IRAs must abide by the same 10-year period, assuming the beneficiary payout guidelines carry over from the plan to the inherited IRA, one of the accounts has annual RMDs in years 1 – 9, and the other (from Ray's 401(k)) does not. Until the IRS issues further guidance, IRA "A" and "B" should not be consolidated because Lori has the advantage of the "at least as rapidly" only applies to A and not B.



Beneficiaries of Beneficiaries

"at least as rapidily"

The proposed regs require that if the IRA owner dies on or after the RBD and the beneficiary is a designated beneficiary or an EDB, successor beneficiaries must continue to take distributions that the designated beneficiary or EDB was scheduled to take.

[Prop. Treas. Regs. Section 1.401(a)(9)-5(e)(3)

Harsh Penalties for Failing to Take RMDs

Potential for Penalties

To add to the confusion, there is a separate RMD for each class of retirement asset. For example, you can't take 100% of aggregated RMD from your 401(k) if you also have an IRA or other assets. The investor must take an RMD for each retirement asset category.

Final regulations regarding RMDs under section 401(a)(9) of the Code and related provisions will apply no earlier than the 2023 distribution calendar year.
Notice 2022-53 , and yet another one! Notice 2023-54

SECURE 2.0 update: The penalty is lowered to 25% and can be reduced to 10% if the IRA owner makes up the RMD promptly. The law says this means the total amount is distributed by the earlier of the second year after the RMD was missed or before the IRS assesses a penalty.

IRA

401K

403B

457

Part 2

Non-Charitable Estate Planning

PART 1

Retirement Plan Assets Primer

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→ Non-Charitable Estate Planning

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Charitable Estate Planning (Lifetime & Testamentary)

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Advanced Non-Charitable Estate Planning with Retirement Assets, Post-SECURE

"Don't knock yourself out looking for long-term payouts that no longer exist."

-Natalie Choate

See-Through Trusts

Conduit Trusts

“all distributions [from the plan] will, upon receipt by the Trustee, be paid directly to, or for the benefit of, specified beneficiaries.”

Accumulation Trusts

“is any See-Through Trust that is not a conduit trust.” The trustee of an Accumulation Trust can receive distributions and “accumulate” them in the trust.

Definition of “See-Through” Trust Post-SECURE

In determining the designated beneficiaries, treasury regulation 1.401(a)(9)-4, Q&A-5, defines “Look Through” or “See Through” to Trust Beneficiaries when it complies with specific rules.

A see-through trust is any trust that complies with the four minimum distributions trust rules.

1. Trust is valid under state law
2. Irrevocable at the descendant's death
3. Copy if given to plan administrator by a specific deadline
4. Beneficiaries of the trust must be identifiable. (Don’t have to worry about the oldest beneficiary) This definition of “identifiable” means you can identify who is entitled to the employee's benefits paid to that trust.

Testing the Beneficiaries of a See-Through Trust

Under the proposed regulations, there is a 3-tier system for testing trust beneficiaries

First-tier: “Any beneficiary who could receive amounts in the trust representing the employee’s interest in the plan that are neither contingent upon, nor delayed until the death of another trust beneficiary…”.[ ] Example:Income to my spouse for life and remainder to our children. Of all the participants for life, the spouse is entitled to get money on the participant's death, so she's a first-tier beneficiary.

Second-tier: a beneficiary “that could receive amounts in the trust representing the employee’s interest in the plan that were not distributed to the beneficiaries described in paragraph (f) (3)(i) (A) of this section,” i.e., the first-tier beneficiaries.

Third-tier: a beneficiary “who could receive amounts from the trust that represent the employee’s interest in the plan solely because of the death of another beneficiary described in paragraph (f)(3)(i)(B) of this section,” i.e., only after the death of a second-tier beneficiary.

Prop. Reg. § 1.401(a)(9)-4(f)(3)(i)(A)

DETERMINING WHO ARE THE PARTICIPANT'S SEE-THROUGH TRUST BENEFICIARIES

THERE ARE TWO RULES CONSISTENT WITH BOTH CONDUIT AND ACCUMULATION TRUSTS.

1. First-tier beneficiaries always count.

2. Third-tier beneficiaries are always disregarded and never counted.

Determination of the Designated Beneficiary

→ The proposed regs allow more flexibility by disregarding particular contingent remainder beneficiaries, clarifying that there may be additions to the class of beneficiaries, and ignoring permissible appointees until the power of appointment (POA) is exercised in their favor.

→ If the surviving spouse is the employee's sole beneficiary and dies after the employee, but before required distributions commence – the successor beneficiary is the person designated as a beneficiary as of the date of the surviving spouse's death and remains a beneficiary as of September 30 of the calendar year following the calendar year of the surviving spouse's death.

Treas. Reg. § 1.401(a)(9)-4(d)

For a conduit trust, first-tier beneficiaries are the only ones that count, and the second-tier beneficiaries are disregarded.

Determination of the Designated Beneficiary

Example

Jim Anderson's IRA trust provides:

(1) first to Jim's surviving spouse Ann, and
(2) then to Jim's brother, Larry. Suppose Jim survives both 1&2,
(3) then to the Salvation Army.

Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(A)

Determination of the Designated Beneficiary

Example

Jim Anderson's IRA trust provides:

(1) first to Jim's surviving spouse Ann, and
(2) then to Jim's son, Eric. Suppose Jim survives both 1&2,
(3) then to the Salvation Army.

Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(A)

Determination of the Designated Beneficiary

Example

Jim Anderson's IRA trust provides:

(1) first to Jim's daughter Rebecca, and
(2) then to Jim's son, Eric. Suppose Jim survives both 1&2,
(3) then to the Salvation Army.

Treas. Reg. § 1.401(a)(9)-4(g)(1)(ii)(3).

Additional Advantages

of Using Trusts for Retirement Plan Assets

No creditor protection when IRA is left directly to loved ones

Limiting a beneficiary's access

Naming successive beneficiaries

Solving for second marriage or other family structures

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Charitable Estate Planning (Lifetime & Testamentary)

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How to Use (QCDs) Qualified Charitable Distributions as a Tax-Saving Tool

Qualified Charitable Distributions (QCDs)

The Protecting Americans for Tax Hikes Act of 2015 (PATH Act) permanently added QCDs to the law starting in 2016

The total amount of a QCD can be excluded from income even when the charitable contribution exceeds the 60 percent/30 percent adjusted gross income (AGI) limitation on charitable contributions.

- Because QCDs are a per-individual benefit, if spouses filing jointly meet the eligibility rules, up to $210,000 can be excluded from their income. Distributions from IRAs eliminate income in respect of the decedent and the potential for double taxation on the owner's estate tax return and beneficiaries' income tax returns.

- Social Security
  Medicare Part B and D
  3.8 percent surtax on investment income
  Tax Cuts and Jobs Act of 2017
  State doesn't allow for a charitable income tax deduction

Individuals who claim the standard deduction can benefit from the full charitable deduction even though they do not itemize.

Tax Triggers to Higher Taxes	Up to 85% of Social Security income. **SS increases marginal income tax rate as % of SS becomes taxable**	The transition from 12% to 22% income tax bracket	Medicare Part B Premium thresholds	3.8% surtax on Net Investment Income
Single Filer	Two thresholds: $25,000 to $34,000 0%-50%-85%	$40,525	$170/month if income is $91,000 or less $238.10 to $578.30/month, depending on how much an individual beneficiary's modified adjusted gross income exceeds $91,000.	$200,000
Married Filing Jointly	Two thresholds: $32,000 to $44,000 0%-50%-85%	$81,050	$170/month if income is $182,000 or less $238.10 to $578.30/month, depending on the extent to which the couple's modified adjusted gross income exceeds $182,000.	$250,000

Example:

George and Connie Fox, both 84 years old, are married, retired business owners. Connie would like to use both her and George's collective IRA RMDs ($98,000 combined) as the source of a support for her alma mater to set up an endowment.

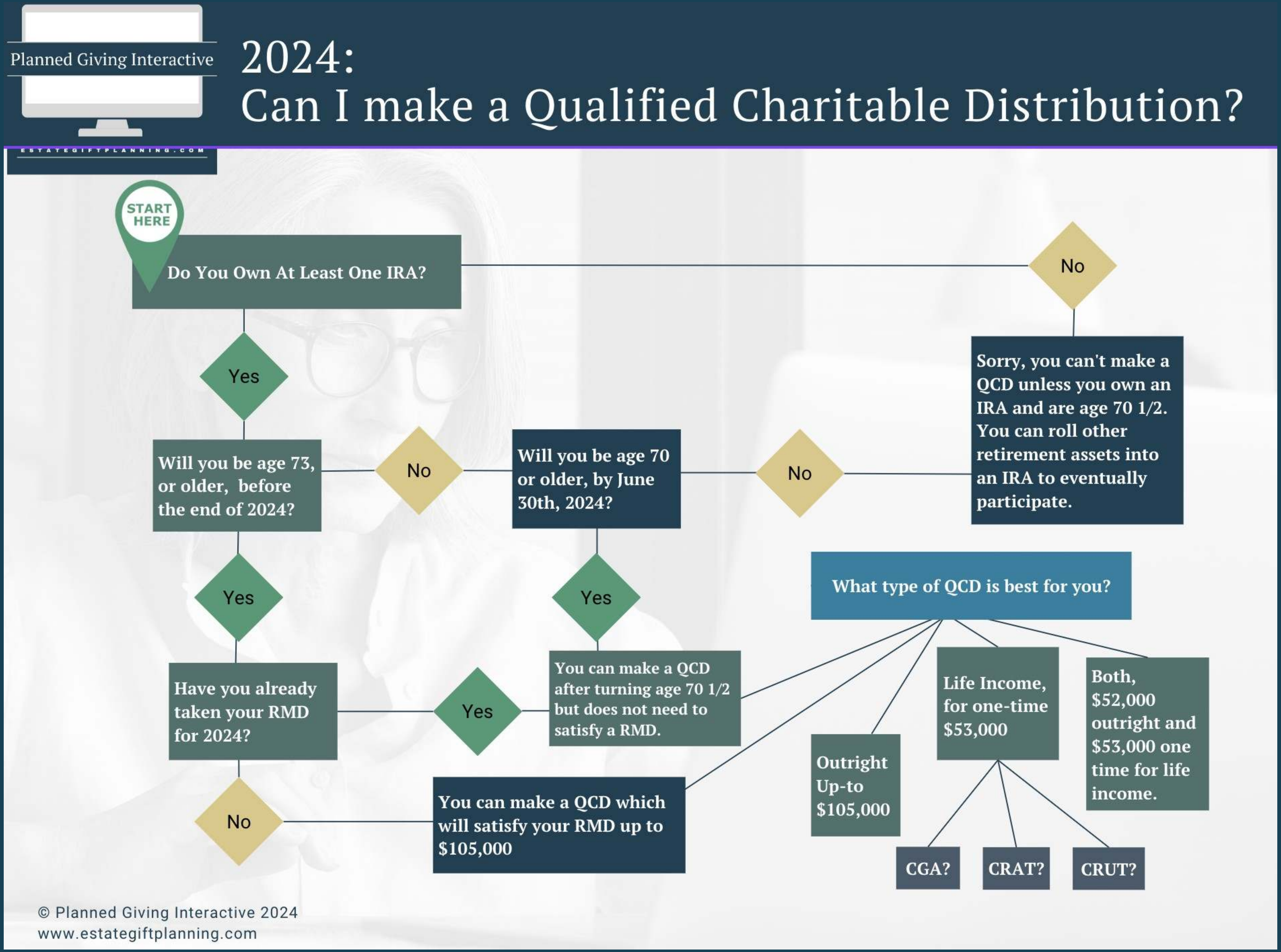
In addition to helping the charity, it will considerably reduce the couple's taxable income this year.

By not bringing their RMDs into their income, George and Connie have saved a considerable amount in taxes.

One of the most overlooked savings is to reduce the monthly Medicare part B payments, which have several income thresholds.

	No QCD	QCD
Qualified Dividends	$20,000	$20,000
Pension Income	$160,000	$160,000
Taxable SS (85% of $60k)	$51,000	$51,000
RMD ($98,000)	$98,000	0
Standard Deduction	$28,700	$28,700
Taxable Income	$300,300	$202,300
Federal Taxable Income	$57,943	$34,423
3.8% Surtax	$760	0
Total Tax	**$58,703**	**$34,423**
Additional Tax savings		
Medicare Part B Monthly Premiums	**$442.30**	**$238.10**

SECURE 2.0 December 2022



Roth IRA Conversions (Post-SECURE)

Possibly effective for Accumulation Trusts

No RMD, so all DB can defer at least 10 years

Purchase life insurance for regular Designated Beneficiaries

"If a Roth conversion did not make sense when the beneficiaries could get 50-80 years of tax-free growth, it won't make much more sense when it's only ten years. Despite the above concerns, partial or even full Roth conversions can still make sense, but the variables to consider are often much more complicated than financial writers make them out to be. We are stuck with planning for traditional accounts for the foreseeable future ."

Ed Morrow, in Leimberg Information Services (LISI) Newsletter #192 (February 18, 2020)

Charitable Estate Planning with Retirement Assets Post-SECURE

- Bequests Commitments
- Avoid Pecuniary Bequests
- A Loan from Donors' IRA to a Charity
- Donor-Advised Fund as Beneficiary of Retirement Asset
- Private Foundation as Beneficiary of Retirement Asset
- Testamentary Charitable Gift Annuity
- Testamentary Charitable Remainder Trusts

"Don't tie yourself into knots trying to stretch the required minimum distributions by a few extra years- it generally does not provide for appreciable benefits!"

-Alan Gassman, Tax attorney in St. Pete, FL

Charitable Bequest Planning

- For trusts typically use a percentage/fraction and NOT a pecuniary amount Chief Counsel Advice (CCA) 200644020
- Letter Ruling 200741016 CHIRA™
- "Non-person" beneficiaries must receive their distributions before September 30th or the year following the IRA/plan owner's death
- Charity as discretionary beneficiary IRC 1.401(a)(9)-5,A-7(c)(3), Example 2

When IRA is payable to the estate, there is no designated beneficiary (even if transferred in kind to individuals by September 30th) thus, either the 5-Year Rule or the At-Least-As-Rapidly Rule would apply for Required Minimum Distribution purposes.

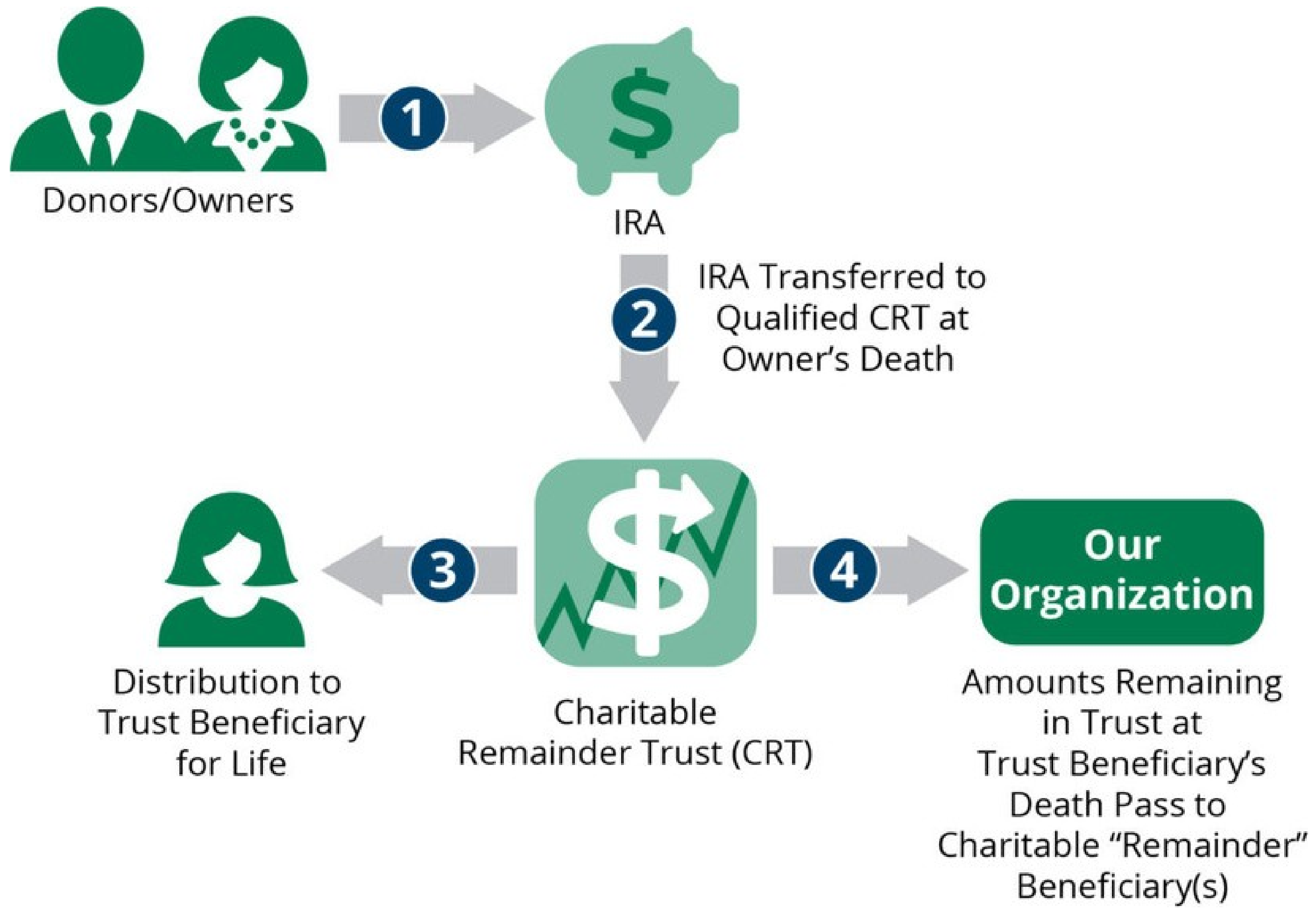
Also, issues with providing a disclaimer to the beneficiary to opt to set up CRT, Private Foundation, or even a DAF if the beneficiary has an interest.

Testamentary
Charitable Remainder Trust

→ Name the trust as the primary beneficiary of the Donor's IRA

→ Review Your States "Dry Trust" Rules

→ Letter Ruling's 9237020, 9253055



"The benefit of the stretch through the CRT may offset or outweigh the loss of the remainder interest."

Attorney, Bruce Steiner
Trust & Estates Magazine, March 2020

www.estategiftplanning.com

Assumptions

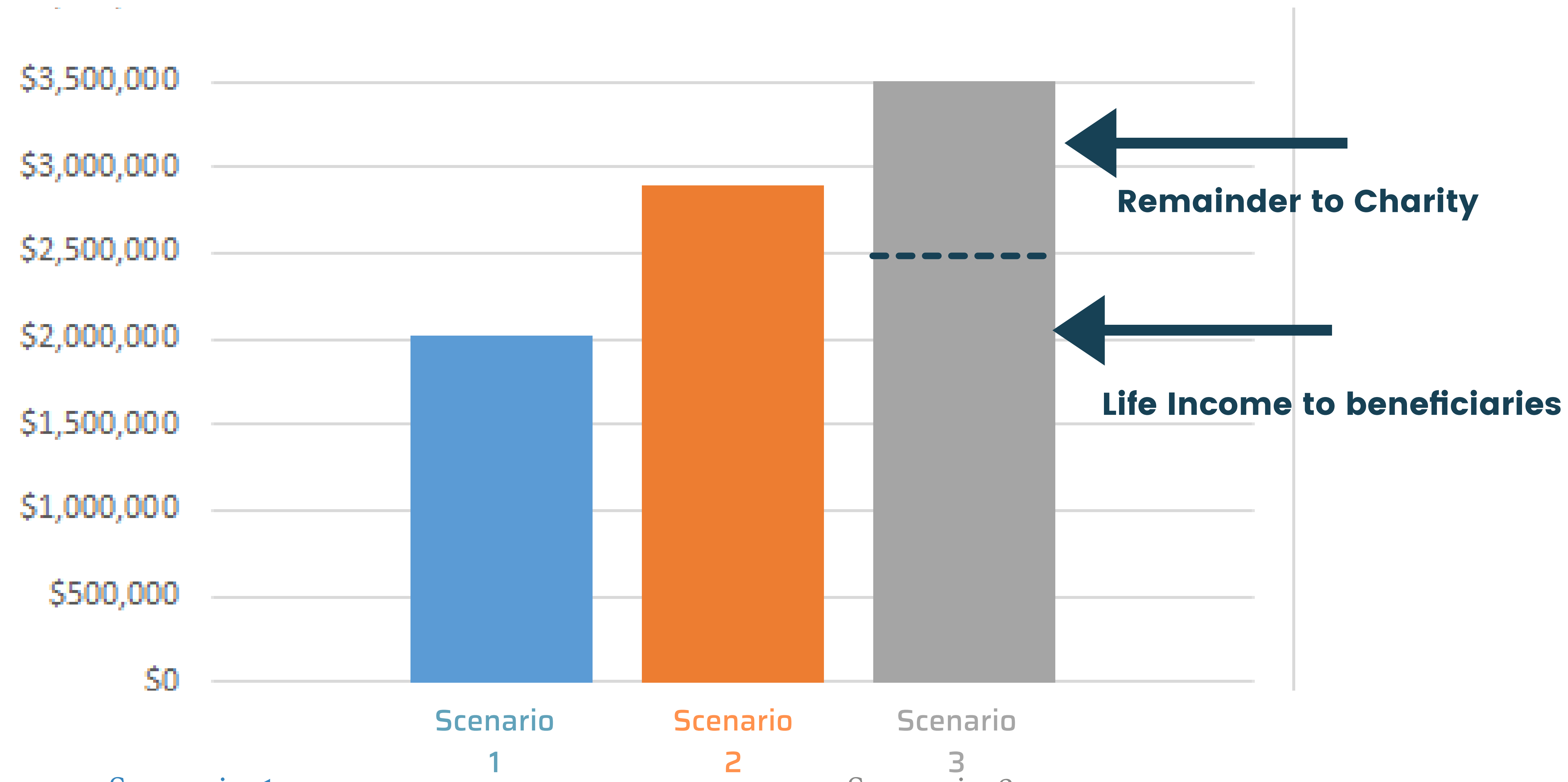
Tax rate: 37% on Lump Sum Withdrawal
Tax rate: 22% assessed ongoing

Scenario 1: Inherits $500K IRA. No rollover to inherited IRA; immediate withdrawal. Amount invested after taxes.

Scenario 2: Inherits $500K IRA. Rollover to inherited IRA, 10-year deferral then withdrawn.

Scenario 3: $500K into Testamentary CRUT. 5% annual payout based on the beginning principal balance.

Rate of return: 7%
Term of Years: 35
Principal: $500,000



Scenario 1:
Total after 35 years: $2,024,805
Growth: $1,524,805
PV (Beg. Yr 1): $315,000

Scenario 2:
Total after 35 years: $2,897,986
Growth: $2,397,986
PV (Yr 10 to Beg. Yr 1): $498,290

Scenario 3:
Remaining Principal
Total after 35 years: $999,939
Growth: $499,939
PV: $93,657
Lifetime Income
Total after 35 years: $2,495,565
Growth: $2,495,565
PV: $388,237

Where Should a Testamentary CRT Document “Live”?

- CRT provisions into a revocable living trust document

  "100% to ABC Charity, trustee of a charitable remainder trust described in Clause X of a trust document executed by me on Month, Day, Year.”

- The “Dry” Trust

  Draft as revocable "fund with $10" and irrevocable at the death of Grantor. There is no intent that the trustee actually invests the $10, make payments to the income beneficiaries, or file tax returns.

- Create a "Fund" a Qualified CRT Today

  Irrevocable, non-grantor trust.
  EIN and tax reporting annually.

Part 4

Conclusion

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Retirement Plan Assets Primer

PART 2

Planning Challenges with Retirement Assets

PART 3

Charitable (& Non-Charitable) Solutions to the Planning Challenges with Retirement Assets

→ PART 4

Conclusion

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Self Reporting

Thank you!

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