

# RETIREMENT ACCOUNTS

## REQUIRED DISTRIBUTION RULES AFTER ENACTMENT OF THE SECURE ACT

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**A. OBJECTIVES** - Keep the largest amount in an IRA or QRP, so you can earn investment income on the deferred income taxes in the account. **EXAMPLE:**

	<u>Principal</u>		<u>10% Yield</u>		<u>5% Yield</u>
Amount in IRA	\$100,000	10%	\$ 10,000	5%	\$ 5,000
Income Tax on Distribution (40%)	<u>40,000</u>				
Amount Left to Invest	\$ 60,000	10%	\$ 6,000	5%	\$ 3,000

In order to force QRP and IRA accounts to be used to provide retirement income, Congress enacted two significant penalties. First, there is a 10% penalty tax for most distributions before age 59 ½. Section 72(t). Second, there is a 50% penalty tax imposed on the account owner for not receiving the required minimum distribution (“RMD”). Sec. 4974; Reg. Sec. 54.4974-2. The penalty is imposed during one’s lifetime after attaining the age of 72 or retiring, whichever occurs later. The 50% penalty tax also applies after the account owner's death to beneficiaries who fail to receive the post-death minimum amounts.

**B. REQUIRED LIFETIME DISTRIBUTIONS AFTER AGE 72 [previously age 70 ½]**

GENERAL RULES – Unless you are married to someone who is more than ten years younger than you, there is one -- and only one -- table of numbers that tells you the portion of your IRA, 403(b) plan or qualified retirement plan that must be distributed to you each year after you attain the age of 72. The only exception to this table is if (1) you are married to a person who is more than ten years younger than you and (2) she or he is the only beneficiary on the account. In that case the required amounts are even less than the amounts shown in the table. To be exact, the required amounts are based on the joint life expectancy of you and your younger spouse.

**Note: There are no RMDs in year 2020. The CARES Act eliminated RMDs for the year**

**–YEAR 2021 --UNIFORM LIFETIME DISTRIBUTION TABLE –**

<i>Age</i>	<i>Payout</i>						
70	-0-	80	5.35%	90	8.78%	100	15.88%
71	-0-	81	5.59%	91	9.26%	101	16.95%
72	3.91%	82	5.85%	92	9.81%	102	18.19%
73	4.05%	83	6.14%	93	10.42%	103	19.24%
74	4.21%	84	6.46%	94	10.99%	104	20.41%
75	4.37%	85	6.76%	95	11.63%	105	22.23%
76	4.55%	86	7.10%	96	12.35%	106	23.81%
77	4.72%	87	7.47%	97	13.16%	107	25.65%
78	4.93%	88	7.88%	98	14.09%	108	27.03%
79	5.13%	89	8.33%	99	14.93%	109	29.42%

[Table computed from Table A-2 of Reg. Sec. 1.401(a)(9)-9 (2002) -- (rounded up)]

[\* Individuals who attained age 70 ½ in the year 2019 must receive a distribution in year 2020 (e.g., at age 71), despite the provision in the SECURE Act that changed the age to 72]

TWO SIMPLE STEPS:

**Step 1:** Find out the value of your investments in your retirement plan account on the last day of the preceding year. For example, on New Years Day -- look at the closing stock prices for December 31.

**Step 2:** Multiply the value of your investments by the percentage in the table that is next to the age that you will be at the end of this year. This is the minimum amount that you must receive this year to avoid a 50% penalty.

Example: Ann T. Emm had \$100,000 in her only IRA at the beginning of the year. She will be age 80 at the end of this year. In the year 2021, she must receive at least \$5,350 during the year to avoid a 50% penalty (5.35% times \$100,000). If she had attained age 80 in the year 2022, she would only need to receive at least \$4,950 during the year to avoid a 50% penalty (4.95% times \$100,000). Please see the table below.

**– Year 2022 and later --UNIFORM LIFETIME DISTRIBUTION TABLE –**

Age	Payout						
70 ½	-0-%	80	4.95%	90	8.27%	100	15.63%
71	-0-%	81	5.19%	91	8.78%	101	16.95%
72	3.67%	82	5.44%	92	9.26%	102	17.86%
73	3.79%	83	5.69%	93	9.91%	103	19.24%
74	3.93%	84	5.96%	94	10.53%	104	20.41%
75	4.07%	85	6.25%	95	11.24%	105	21.74%
76	4.22%	86	6.58%	96	12.05%	106	23.26%
77	4.39%	87	6.95%	97	12.83%	107	24.39%
78	4.57%	88	7.36%	98	13.70%	108	25.65%
79	4.77%	89	7.76%	99	14.71%	109	27.03%

**C. MAXIMUM YEARS FOR PAYOUTS AFTER ACCOUNT OWNER’S DEATH: TEN YEARS, FIVE YEARS, OR A REMAINING LIFE EXPECTANCY**

Failure to receive the required minimum distribution (“RMD”) for that year from an inherited retirement account triggers a 50% penalty on the shortfall. The maximum time period over which a decedent’s account may be liquidated without such a penalty after the year of death is either:

**(#1) ten years**, if only “designated beneficiaries” (“DBs”) (or a “look-through trust” with 100% DBs) are the beneficiaries of the account (there is no RMD until the 10<sup>th</sup> year), § 401(a)(9)(H)(i)

**(#2) the remaining life expectancy of an eligible designated beneficiary (“EDB”)**, based on the EDB’s age at the end of the year that follows the account owner’s death. An EDB is a beneficiary who is: a surviving spouse, a minor child of the decedent, disabled, chronically ill, or someone who is not more than ten years younger than the decedent (there is an RMD every year), §§ 401(a)(9)(H)(ii), (E)(ii) & B(iii)

**(#3) five years**(there is no RMD until the 5<sup>th</sup> year), if the account owner died before the required beginning date (“RBD”) and there is even just one non-DB on the “determination date” (generally, September 30 following the year of death), §§ 401(a)(9)(B)(ii) and (H)(i)(“Except in the case of...); Reg. § 1.401(a)(9)-3 Q&A 4; or

**(#4) the life expectancy of someone who was the account owner’s age** (a/k/a a “ghost life expectancy”) if the account owner died after the RBD and there is even just one non-DB on the “determination date.”

There will be RMDs in each of those years. §§ 401(a)(9)(B)(i) and (H)(i); Reg. § 1.401(a)(9)-5 Q&A 5(c)(3)

## YEAR 2021 LIFE EXPECTANCY TABLE

Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
0	82.4	20	63.0	40	43.6	60	25.2	80	10.2
1	81.6	21	62.1	41	42.7	61	24.4	81	9.7
2	80.6	22	61.1	42	41.7	62	23.5	82	9.1
3	79.7	23	60.1	43	40.7	63	22.7	83	8.6
4	78.7	24	59.1	44	39.8	64	21.8	84	8.1
5	77.7	25	58.2	45	38.8	65	21.0	85	7.6
6	76.7	26	57.2	46	37.9	66	20.2	86	7.1
7	75.8	27	56.2	47	37.0	67	19.4	87	6.7
8	74.8	28	55.3	48	36.0	68	18.6	88	6.3
9	73.8	29	54.3	49	35.1	69	17.8	89	5.9
10	72.8	30	53.3	50	34.2	70	17.0	90	5.5
11	71.8	31	52.4	51	33.3	71	16.3	91	5.2
12	70.8	32	51.4	52	32.3	72	15.5	92	4.9
13	69.9	33	50.4	53	31.4	73	14.8	93	4.6
14	68.9	34	49.4	54	30.5	74	14.1	94	4.3
15	67.9	35	48.5	55	29.6	75	13.4	95	4.1
16	66.9	36	47.5	56	28.7	76	12.7	96	3.8
17	66.0	37	46.5	57	27.9	77	12.1	97	3.6
18	65.0	38	45.6	58	27.0	78	11.4	98	3.4
19	64.0	39	44.6	59	26.1	79	10.8	99	3.1

Table A-1 of Reg. Sec. 1.401(a)(9)-9 (“single life ”), required by Reg. Sec. 1.401(a)(9)-5, Q&A 5(a) & 5(c) and Q&A 6.

## LIFE EXPECTANCY TABLE - Years 2022 and later

Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
0	84.5	20	65.0	40	45.7	60	27.1	80	11.2
1	83.7	21	64.0	41	44.7	61	26.2	81	10.5
2	82.7	22	63.0	42	43.8	62	25.3	82	9.9
3	81.7	23	62.0	43	42.8	63	24.5	83	9.2
4	80.8	24	61.1	44	41.8	64	23.6	84	8.6
5	79.8	25	60.1	45	40.9	65	22.8	85	8.1
6	78.8	26	59.1	46	39.9	66	22.0	86	7.5
7	77.8	27	58.2	47	39.0	67	21.2	87	7.0
8	76.8	28	57.2	48	38.0	68	20.4	88	6.6
9	75.8	29	56.2	49	37.1	69	19.5	89	6.1
10	74.8	30	55.3	50	36.1	70	18.7	90	5.7
11	73.8	31	54.3	51	35.2	71	17.9	91	5.3
12	72.8	32	53.4	52	34.3	72	17.1	92	4.9
13	71.9	33	52.4	53	33.1	73	16.3	93	4.6
14	70.9	34	51.4	54	32.4	74	15.6	94	4.2
15	69.9	35	50.5	55	31.5	75	14.8	95	3.9
16	68.9	36	49.6	56	30.6	76	14.0	96	3.7
17	67.9	37	48.6	57	29.7	77	13.3	97	3.4
18	66.9	38	47.6	58	28.8	78	12.6	98	3.2
19	66.0	39	46.6	59	27.9	79	11.9	99	3.0

## D. REQUIRED DISTRIBUTIONS AFTER DEATH-- Terminology

**Required Beginning Date ("RBD")** - The first date that a distribution must be made from an IRA, QRP or 403(b) account to the account owner in order to avoid the 50% penalty tax.<sup>1</sup>

**IRAs:** The RBD for an IRA is April 1 following the calendar year that the IRA account owner attains age 72.<sup>2</sup>

**QRP or 403(b):** The RBD for a qualified retirement plan or a tax-sheltered annuity is the later of (a) April 1 following the calendar year that the account owner attains age 72 or (b) April 1 following the calendar year that the employee separates from service (e.g., somebody who works past age 73).<sup>3</sup> Individuals who own 5% or more of a business are not eligible for this later RBD: their RBD is April 1 following the calendar year that they attain age 72.

**"Beneficiaries" versus "Designated Beneficiary" ("DB")** - A beneficiary is any person or entity that is entitled to receive benefits from a QRP or IRA account after the account owner's death. By comparison, a *designated beneficiary* is an *individual* who is entitled to the benefits of the IRA or QRP account upon the death of the employee / participant / IRA owner (hereafter "account owner").<sup>4</sup> Neither a charity nor the decedent's estate will qualify as a DB since neither has a life expectancy. If certain criteria are met, a trust may be the beneficiary of an IRA or QRP and distributions will be based on the beneficiaries of that trust (a "look-through trust").

**"Eligible Designated Beneficiary" ("EDB")** - An EDB qualifies for an exception to the general ten liquidation rule. An EDB may receive distributions over his or her the remaining life expectancy of an eligible designated beneficiary ("EDB"), based on the EDB's age at the end of the year that follows the account owner's death. An EDB is a beneficiary who is: a surviving spouse, a minor child of the decedent (though upon attaining majority age, the ten year rule applies), disabled, chronically ill, or someone who is not more than ten years younger than the decedent.<sup>5</sup>

**Determination Date** - The minimum distributions will be computed based only on the beneficiaries who still have an interest on the determination date. That date is September 30 of the calendar year that follows the calendar year of the account owner's death.<sup>6</sup> Example: Sarah died on September 14, 2020, the determination date for her IRA and QRP accounts will be September 30, 2021.

**There are basically three ways to eliminate some of the beneficiaries before the determination date: (1) disclaimers, (2) cash-out of a beneficiary and (3) separate accounts for different beneficiaries.** If a beneficiary's interest is eliminated between the time that the account owner died and the determination date – for example by a cash out or a disclaimer -- then that beneficiary will not impact the required minimum distributions. PLR 200740018 (July 12, 2007).

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<sup>1</sup> Sec. 4974; Reg. Sec. 54.4974-2, Q&A 1 and 2; Sec. 401(a)(9)(C)(i).

<sup>2</sup>Sec. 408(a)(6); Reg. Sec. 1.408-8 Q&A 3.

<sup>3</sup>Sec. 401(a)(9)(C); Reg. Sec. 1.401(a)(9)-2, Q&A 2.

<sup>4</sup> Sec. 401(a)(9)(E)(i); Reg. Sec. 1.401(a)(9)-4, Q&A 1.

<sup>5</sup> Sec. 401(a)(9)(E)(ii)

<sup>6</sup> Reg. Sec. 1.401(a)(9)-4, Q&A 4.

**E. REQUIRED MINIMUM DISTRIBUTIONS FROM IRAs AND QRPs AFTER THE ACCOUNT OWNER’S DEATH, BASED ON THE BENEFICIARIES AS OF THE “DETERMINATION DATE”**

<b>BENEFICIARY</b>	<b>DEATH BEFORE RBD</b>	<b>DEATH AFTER RBD</b>
“No designated beneficiary (“DB”)” - if there is even just one non-human beneficiary (e.g., probate estate or a charity)	Five Years [No RMD until the 5 <sup>th</sup> year]	Remaining life expectancy of someone who was the <i>decedent’s age</i> in the year of death (“ghost life expectancy”) [RMDs must be made each year]
<b>NON-SPOUSE DESIG. BENIF.</b>		
<b>General Rule if all beneficiaries are individuals (“DBs”)</b>	Ten Years [No RMD until the 10 <sup>th</sup> year]	- Same: Ten Years - * * An argument can be made that the term can be the “ghost life expectancy,” if that is more than ten years
<b>Rollover option?</b>	Not available to anyone but a surviving spouse.**	** - Possible to transfer decedent’s account from a company plan (but not from an IRA) to an IRA payable over ten years (or life expectancy of an EDB)
<b>Eligible Designated Beneficiary (“EDB”)</b>	Remaining life expectancy of the <i>EDB</i> ,* fixed as of the year <i>after</i> death. Distributions must begin before the end of the year that follows the year of death. [RMDs must be made each year]	– Same Rule – * - (if the EDB is older than the deceased, use life expectancy based on the deceased’s age)
<b>Beneficiaries include both EDBs and non-EDBs</b>	Unless separate shares are established, generally Ten Years (or Five Years). Special rules benefit accumulation trust for disabled & chronically ill.	Ten Years ( or remaining life expectancy of someone who was the <i>decedent’s age</i> ) [unless separate shares; special rules benefit disabled & chronically ill]
<b>SPECIAL RULES</b>		
<b>“Look-through” trust/ “See-through” trust</b>	“Look through” to identity of DBs and EDBs of the trust to determine RMDs.	– Same Rule --
<b>Remainder beneficiary</b>	A remainder beneficiary is counted as a beneficiary of an <i>accumulation trust</i> , but not of a <i>conduit trust</i>	– Same Rule –

<b>BENEFICIARY</b>	<b>DEATH BEFORE RBD</b>	<b>DEATH AFTER RBD</b>
<b>SPOUSE IS THE BENEFICIARY</b>		
<b>Rollover Option?</b>	Yes, available	Yes, available
<b>Leave in deceased's account and spouse is the sole beneficiary?</b>		
<b>-- General Rule</b>	<b>Minimum distributions over the surviving spouse's remaining life expectancy, <i>gradually extended</i> each year as the spouse ages.</b>	<b>-- Same Rule --</b>
<b>-- IRAs only: elect to treat as own IRA</b>	<b>Surviving spouse can elect to leave assets in deceased's IRA but treat that IRA like a rollover IRA.</b>	<b>-- Same Rule --</b>
<b>-- Decedent died before age 72?</b>	<b>Can defer first distribution until the year that the deceased spouse would have been age 72.</b>	<b>Not applicable</b>
<b>MULTIPLE DBs; ONE IS THE SPOUSE</b>		
<b>Both spouse and another DB are the beneficiaries</b>	Generally ten years, unless separate shares are established.	<b>-- Same Rule --</b>
<b>Both spouse and a charity are beneficiaries</b>	Five Years, unless separate accounts are established for the beneficiaries.	Remaining life expectancy of someone who was the <i>decedent's age</i> , unless separate accounts for the beneficiaries.
<b>"Look-through" trust/ "See-through" trust</b>	Generally ten years, since "look through" to identity of the beneficiaries. If payable to a conduit trust, then the remaining life expectancy of the spouse.	<b>-- Same Rule --</b>
<b>Remainder beneficiary</b>	A remainder beneficiary is counted as a beneficiary of an <i>accumulation trust</i> , but not of a <i>conduit trust</i>	<b>-- Same Rule --</b>

## SURVIVING SPOUSE DISTRIBUTION OPTIONS – AT AGE 80

**Example:** At age 80, Ms. Widow began receiving distributions from several IRAs, including the IRAs of her older husband and her older sister (both of whom had died in the preceding year at age 93). Although the life expectancy of an 80 year old is 11.2 years (i.e., to age 91), Ms. Widow in fact lived to age 94. Whereas the law requires two IRAs (IRAs C and D) to be empty by age 89 (ten years after the deaths), amounts could still remain in other IRAs at that age. The minimum amounts required to be distributed from each of six IRAs are listed in the table.

- A - *Her own IRA***, established with contributions she made during her working career.
- \*B - *A rollover IRA***, funded after her husband's death with a distribution from his 401(k) plan.
- C - *An inherited IRA (her sister's IRA)***
- D - *Bypass Trust #1 - Her deceased husband's IRA is payable to a standard bypass trust***, treated as a stretch IRA payable to a *look-through accumulation trust* (required distributions from an accumulation trust are determined by looking at all beneficiaries of the trust – EBDs and non-EDBs. The same distribution rules apply to a QTIP trust.)
- \*E - *Bypass Trust #2 - Her deceased husband's IRA is payable to a similar trust, but the trust requires all retirement plan distributions to be made to Ms. Widow***. This provision permits a look-through trust to be treated as a *conduit trust*
- CRT - *Charitable Remainder Trust*** - After his death, her husband's fourth IRA was distributed in a lump sum to a tax-exempt CRT that will annually distribute 5% of its assets to Ms. Widow for the rest of her life, then to her husband's 50-year old child from his first marriage for the rest of the child's life, and then upon the child's death will be distributed to a charity.

AGE	IRAs A & B	IRAs C & D	IRA E	IRA CRT
80	4.95%	-0- %	8.93%	5.00%
81	5.19%	-0- %	9.53%	5.00%
82	5.44%	-0- %	10.10%	5.00%
83	5.69%	-0- %	10.87%	5.00%
84	5.96%	-0- %	11.63%	5.00%
85	6.25%	-0- %	12.35%	5.00%
86	6.58%	-0- %	13.33%	5.00%
87	6.95%	-0- %	14.29%	5.00%
88	7.36%	-0- %	15.15%	5.00%
89	7.76%	100.00%	16.40%	5.00%
90	8.27%	empty	17.54%	5.00%
91	8.78%		18.87%	5.00%
92	9.26%		20.41%	5.00%
93	9.90%		21.38%	5.00%
94	10.53%		23.81%	5.00%

*\*Payout "B" (a rollover) is only available to a surviving spouse.*

*\*Payout "E" permits a surviving spouse to annually recompute her life expectancy. With a conduit trust, RMDs are computed without considering remainder beneficiaries (unlike an accumulation trust).*



**Legal Authority for Various Payout Rules:** **IRA A:** Reg. Sec. 1.401(a)(9)-5, Q&A 4 and Reg. Sec. 1.401(a)(9)-9, Table A-2. **IRA B:** Same, and Secs. 402(c)(9) and 408(d)(3)(C)(ii)(II) permit a surviving spouse to do a rollover. **IRA C:** Secs. 401(a)(9)(H)(i) and (vi), and 408(d)(3)(C). **IRA D:** Reg. Sec. 1.401(a)(9)-5, Q&A 7(c)(3), Example 1, as modified by Sec. 401(a)(9)(H)(i) and (vi). **IRA E:** Reg. Sec. 1.401(a)(9)-5, Q&A 7(c)(3), Example 2, reinforced by Secs. 401(a)(9)(H)(E)(ii)(I) and (H)(ii).

**Required Payments after Ms. Widow's Death:**

**IRAs A & B:** IRAs A & B will generally be liquidated within ten years after Ms. Widow's death to the beneficiaries that she named. Sec. 409(a)(9)(H)(iii)(2020).

**IRA E:** Ms. Widow is an *eligible designated beneficiary*, and a conduit trust permits her to recompute her life expectancy and to ignore remainder beneficiaries for RMDs. After Ms. Widow's death, payments from IRA E must generally be completed over ten years. Sec. 409(a)(9)(H)(iii)(2020). (Compare Reg. Sec. 1.401(a)(9)-5, Q&A 5(c)(2) – old law provided that the remaining term was over the life of someone who was her age in the year of her death).

**IRA CRT (Exhibit G):** The charitable remainder unitrust (CRUT) will commence payments to the next beneficiaries (children) upon the death of the surviving spouse. A CRUT must annually distribute at least 5% of the value of its assets, recalculated annually. With a two generation trust (parent and then child), the parties will likely select the 5% amount to generate the minimum 10% charitable deduction necessary for the trust to qualify as a CRT.

## **IRS Private Letter Rulings - 2014 - 2020**

### **A surviving spouse can rollover a deceased spouse's retirement account, even when the account is payable to:**

#### **A TRUST FOR THE SPOUSE**

- \* PLR 201944003 (Aug 8, 2019) - payable to revocable joint trust
- \* PLR 201923002 (March 4, 2019) - payable to trust where spouse is trustee and beneficiary
  - \* PLRs 201934006 & 201935005 - spouse mistakenly listed as contingent beneficiary
    - \* PLR 201844004 (Aug 4, 2018) - payable to spouse's revocable trust
    - \* PLR 201707001 (Nov 8, 2016) - payable to revocable joint trust
  - \* PLR 201632015 (May 10, 2016) - payable to trust - community property state
    - \* PLR 201507040 (Dec 24, 2014)
  - \* PLR 201430029 (Apr 30, 2014) - H's IRA payable to W's revocable trust
    - \* PLR 201430026 (Apr 29, 2014)
- \* PLR 201423043 (Feb 29, 2014) - Rollover Roth IRAs payable to a marital trust

#### **THE ESTATE, WITH ESTATE POUR-OVER INTO A TRUST FOR THE SPOUSE**

- \* PLR 201736018 (June 9, 2017) - payable to estate; pourover into trust
- \* PLR 201511036 (Dec 18, 2014) and \* PLR 201437029 (June 05, 2014)

#### **THE ESTATE, WHERE THE SPOUSE IS THE SOLE OR RESIDUARY BENEFICIARY OF THE ESTATE**

- \* PLR 201931006 (7 May 2019) - probate estate was default beneficiary when beneficiary form left blank
  - \* PLR 201451066 (Sep 25, 2014)
- \* PLR 201445031 (Aug 11, 2014) - spouse is residuary beneficiary of estate
- \* PLR 201430027 (Apr 30, 2014) - spouse is residuary beneficiary of estate
  - \* PLR 201430020 (May 1, 2014)

**COMBINATION OF *FEDERAL* ESTATE AND INCOME TAXES ON INCOME IN RESPECT OF A DECEDENT – (Year 2020). *State estate & income taxes are extra!***

**EXAMPLE:** Assume Mother's total taxable estate is \$12,000,000 and that all of it will be transferred to her sole heir: Daughter. Assume that the estate will pay the entire estate tax regardless of how Daughter acquired the assets (e.g., joint tenancy, etc.). If \$100,000 in an IRA is immediately distributed to Daughter and if Daughter is in a *37% marginal income tax bracket*, then the combined estate and income taxes on the \$100,000 of IRA assets would be **\$62,200 (62%)**.

Beginning Balance in Retirement Plan		\$ 100,000
Minus: Total Estate Tax Paid by the Probate Estate		(40,000)
Minus: Income Tax On Distribution		
Gross Taxable Income	\$ 100,000	
Reduced By §691(c) Deduction for <i>Federal</i> Estate Tax		
Total Estate Tax	\$ 40,000	
State Tax Credit*	<u>Zero</u>	
Deduction for Federal Estate Tax **		<u>(40,000)</u>
Net Taxable Income	\$ 60,000	
Times Income Tax Rate***	<u>x 37%</u>	
Net Income Tax on Income In Respect Of Decedent		<u>(22,200)</u>
NET AFTER-TAX AMOUNT TO DAUGHTER		<u><u>\$ 37,800</u></u>

\* Treas. Reg. Section 1.691(c)-1(a) limits the deduction to *federal* estate tax. The 2001 Tax Act provided that the Section 2011 state tax credit was fully repealed by the year 2007 so there is no state tax adjustment.

\*\* The deduction is an itemized deduction on Schedule A that is claimed on the last line of the form ("other miscellaneous deductions"). It is not subject to the 2%-of-adjusted-gross-income ("AGI") limitation that most miscellaneous deductions had been subject to. Sec. 67(b)(7). Thus, the Section 691( c) deduction can still be claimed in 2020, even though the 2017 Tax Cut & Jobs Act eliminated the ability to deduct most other miscellaneous itemized deductions.

\*\*\* Whereas retirement income is exempt from the 3.8% health care surtax, if the source of IRD is income that is subject to the surtax (interest, annuity, rents, etc) then the effective marginal income tax rate would be even higher than 37%. The 3.8% health care surtax applies when an individual's adjusted gross income exceeds \$250,000 (\$300,000 on a joint return). For a trust or estate, the 37% marginal tax rate (plus the 3.8% health care surtax) applies with taxable income over just \$12,500.

## Section 401(a)(9) Required distributions.

**(A) In general.**—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

**(B) Required distribution where employee dies before entire interest is distributed.**—

**(i) Where distributions have begun under subparagraph (A)(ii).**—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

- (I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and
  - (II) the employee dies before his entire interest has been distributed to him,
- the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

**(ii) 5-year rule for other cases.**—

A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

**(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary.**—If—

- (I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,
  - (II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and
  - (III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,
- for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

**(iv) Special rule for surviving spouse of employee.**—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

- (I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 72, and
- (II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

**(C) Required beginning date.**—For purposes of this paragraph—

- (i) In general.—The term “required beginning date” means April 1 of the calendar year following the later of—
  - (I) the calendar year in which the employee attains age 72, or
  - (II) the calendar year in which the employee retires.

**(ii) Exception.**—Subclause (II) of clause (i) shall not apply—

- (I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 72, or
- (II) for purposes of section 408(a)(6) or (b)(3).

**(iii) Actuarial adjustment.**—

In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

**(iv) Exception for governmental and church plans.—**

Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term “church plan” means a plan maintained by a church for church employees, and the term “church” means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

**(D) Life expectancy.—**

For purposes of this paragraph, the life expectancy of an employee and the employee’s spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

**[OLD LAW:] (E) Designated beneficiary.—**

For purposes of this paragraph, the term “designated beneficiary” means any individual designated as a beneficiary by the employee.

*[NEW LAW Jan 1, 2020:]*

**(E) DEFINITIONS AND RULES RELATING TO DESIGNATED BENEFICIARIES.—**For purposes of this paragraph—

**(i) Designated Beneficiary.—**The term ‘designated beneficiary’ means any individual designated as a beneficiary by the employee.

**(ii) Eligible Designated Beneficiary.—**The term ‘eligible designated beneficiary’ means, with respect to any employee, any designated beneficiary who is—

- (I) the surviving spouse of the employee,
- (II) subject to clause (iii), a child of the employee who has not reached majority (within the meaning of subparagraph (F)),
- (III) disabled (within the meaning of section 72(m)(7)),
- (IV) a chronically ill individual (within the meaning of section 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or
- (V) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the employee. The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the employee.

**(iii) Special Rule for Children.—**Subject to subparagraph (F), an individual described in clause (ii)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the individual’s interest to which sub-paragraph (H)(ii) applies shall be distributed within 10 years after such date.

**(F) Treatment of payments to children.—**

Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

**(G) Treatment of incidental death benefit distributions.—**

For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

*Sub-Paragraph “H” was added by the SECURE Act, effective Jan 1, 2020:*

**(H) SPECIAL RULES FOR CERTAIN DEFINED CONTRIBUTION PLANS.**—In the case of a defined contribution plan, if an employee dies before the distribution of the employee’s entire interest—

**(i) IN GENERAL.**—Except in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)—

(I) shall be applied by substituting ‘10 years’ for ‘5 years’, and

(II) shall apply whether or not distributions of the employee’s interests have begun in accordance with subparagraph (A).

**(ii) EXCEPTION FOR ELIGIBLE DESIGNATED BENEFICIARIES.**—Subparagraph (B)(iii) shall apply only in the case of an eligible designated beneficiary.

**(iii) RULES UPON DEATH OF ELIGIBLE DESIGNATED BENEFICIARY.**—If an eligible designated beneficiary dies before the portion of the employee’s interest to which this subparagraph applies is entirely distributed, the exception under clause (ii) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary.

**(iv) SPECIAL RULE IN CASE OF CERTAIN TRUSTS FOR DISABLED OR CHRONICALLY ILL BENEFICIARIES.**—In the case of an applicable multi-beneficiary trust, if under the terms of the trust—

(I) it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, or

(II) no individual (other than a eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii)) has any right to the employee’s interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust,

for purposes of a trust described in sub-clause (I), clause (ii) shall be applied separately with respect to the portion of the employee’s interest that is payable to any eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii); and, for purposes of a trust de-scribed in subclause (II), subparagraph (B)(iii) shall apply to the distribution of the employee’s interest and any beneficiary who is not such an eligible designated ben-eficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary.

**(v) APPLICABLE MULTI-BENEFICIARY TRUST.**—For purposes of this sub-paragraph, the term ‘applicable multi-beneficiary trust’ means a trust—

(I) which has more than one beneficiary,

(II) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and

(III) at least one of the beneficiaries of which is an eligible designated beneficiary described in sub-clause (III) or (IV) of subparagraph (E)(ii).

**(vi) APPLICATION TO CERTAIN ELIGIBLE RETIREMENT PLANS.**—For purposes of applying the provisions of this subparagraph in determining amounts required to be distributed pursuant to this paragraph, all eligible retirement plans (as defined in section 402(c)(8)(B), other than a defined benefit plan described in clause (iv) or (v) thereof or a qualified trust which is a part of a defined benefit plan) shall be treated as a defined contribution plan.