

# RETIREMENT ACCOUNTS

## – REQUIRED DISTRIBUTION RULES –

### TABLES AND COMPUTATIONS

Required Distributions - Lifetime	1
Required Distributions - Inherited accounts - life expectancy tables	2
Required Distributions - Inherited accounts - terminology	3
Required Distributions - Summary of rules - table	4
Case study - Mandatory Distributions To A 70 Year-Old Widow	6
Case study - Mandatory Distributions To An 80 Year-Old Widow	7
IRS PLRs: When A Surviving Spouse Can <i>Rollover</i> An IRA Payable To An Estate or Trust	8
Combination of <i>Federal</i> Estate and Income Taxes on IRD in 2018	9

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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 70 ½ 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 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 70 ½. 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 actual joint life expectancy of you and your younger spouse.

**--UNIFORM LIFETIME DISTRIBUTION TABLE --**

<i>Age</i>	<i>Payout</i>						
70	3.65%	80	5.35%	90	8.78%	100	15.88%
71	3.78%	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)]

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. She must receive at least \$5,350 during the year to avoid a 50% penalty (5.35% times \$100,000).

**C. MAXIMUM YEARS FOR PAYOUTS AFTER ACCOUNT OWNER’S DEATH:  
THE DESIGNATED BENEFICIARY’S REMAINING LIFE EXPECTANCY**

This table contains the maximum number of years that distributions may be made from an IRA or some other type of qualified retirement plan after the account owner’s death. The maximum term of years is the remaining life expectancy of either (#1) the account owner, measured by his or her birthday in the year of death (or just 5 years if the account owner dies before the required beginning date (RMD), or (#2) *the life expectancy of a designated beneficiary, based on that beneficiary’s age at the end of the year that follows the account owner’s death.*

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.

## 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 70 ½.<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 70 ½ or (b) April 1 following the calendar year that the employee separates from service (e.g., somebody who works past age 71).<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 70 ½.

**"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").

**Determination Date** - The date when the beneficiaries must be determined is September 30 of the calendar year that follows the calendar year of the account owner's death.<sup>5</sup> Example: Sarah died on September 14, 2018, the determination date for her IRA and QRP accounts will be September 30, 2019. The minimum distributions will be computed based only on the beneficiaries who still have an interest on the determination date. 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).

**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.**

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<sup>1</sup> Sec. 4974; Reg. Sec. 54.4974-2, Q&A 1 and 2.

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

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

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

<sup>5</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>
The <u>estate</u> , a charity, a charitable remainder trust, charitable lead trust, an ineligible trust, or <i>no designated beneficiary</i> (“DB”)	Five Years	Remaining life expectancy of someone who was the <i>decedent’s age</i> in the <i>year of death</i>
<b>NON-SPOUSE DESIG. BENIF.</b>		
<b>General Rule</b>	Remaining life expectancy of the <i>Designated Beneficiary</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.	– Same Rule -- * - (if the DB is older than the deceased, use life expect. based on deceased’s age)
<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 the life expectancy of non-spouse.
<b>Multiple DBs</b>	Remaining life expectancy of the <i>oldest DB</i> , fixed as of the year after death, unless there are separate accounts for the DBs. Distributions must begin before the end of the year that follows the year of death.	– Same Rule --
<b>Both a charity and a DB</b>	Five Years, unless there are separate accounts for the beneficiaries	Remaining life expectancy of someone who was the <i>decedent’s age</i> , unless separate accounts for the beneficiaries.
<b>SPECIAL RULES</b>		
“Look-through” trust/ “See-through” trust	“Look through” to life expectancies of the beneficiaries (note: a charity does not have a life expectancy).	– Same Rule --
<b>Remainder beneficiary of an “accumulation trust”</b>	A remainder beneficiary is counted as a beneficiary (e.g., charitable remainder trust) and is not a contingent beneficiary.	– Same Rule –

<b>BENEFICIARY</b>	<b>DEATH BEFORE RBD</b>	<b>DEATH AFTER RBD</b>
<b>SPOUSE IS THE SOLE DB</b>		
<b>Rollover Option?</b>	Yes, available	Yes, available
<b>Leave in deceased's account?</b>		
<b>-- General Rule</b>	Minimum distributions over the surviving spouse's remaining life expectancy, <i>gradually extended</i> each year as the spouse ages.	-- Same Rule --
<b>-- IRAs only: elect to treat as own IRA</b>	Surviving spouse can elect to leave assets in deceased's IRA but treat that IRA like a rollover IRA.	-- Same Rule --
<b>-- Decedent died before age 70 ½?</b>	Can defer first distribution until the year that the deceased spouse would have been age 70 ½.	Not applicable
<b>MULTIPLE DBs; ONE IS THE SPOUSE</b>		
<b>Both spouse and another DB are the beneficiaries</b>	Remaining life expectancy of the <b>oldest DB</b> , <i>fixed</i> as of the determination date, unless there are separate accounts for the DBs.	-- Same Rule --
<b>Both spouse and charity are beneficiaries</b>	Five Years, unless separate accounts 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>	"Look through" to life expectancies of the beneficiaries (note: a charity does not have a life expectancy).	-- Same Rule --
<b>Remainder beneficiary</b>	A remainder beneficiary is counted as a beneficiary.	-- Same Rule --

## SURVIVING SPOUSE DISTRIBUTION OPTIONS – AT AGE 70

**Example:** At age 70, 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). Although the life expectancy of a 70 year old is 17 years (i.e., to age 87), Ms. Widow in fact lived to age 92. Whereas the law requires two IRAs (IRAs C and D) to be empty by age 87, amounts could still be in the other IRAs at that age. The minimum amounts required to be distributed from each of five 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 - *A stretch IRA -- Her sister's IRA***, where Ms. Widow was named as the beneficiary. Payments from this IRA must be made over a term of years that cannot exceed Ms. Widow's remaining life expectancy in the year that follows her sister's death (i.e., 17 years). A rollover is not possible. Only a surviving spouse can rollover distributions from a deceased person's retirement account.
- D - *Bypass Trust #1 - Her deceased husband's IRA is payable to a standard bypass trust***, where the trust distributes net income to her for life and then to a child. This is treated as a stretch IRA payable to a ***look-through trust*** where the required distributions are based on looking at the ages of the beneficiaries of the trust. 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***. When a surviving spouse is the beneficiary of a conduit trust, she is treated as the "sole" beneficiary of the IRA which permits her life expectancy to be "recalculated" each year rather than frozen for a fixed term of years. The same rules would apply to a QTIP trust.

<u>AGE</u>	<u>IRAs A &amp; B</u>	<u>IRAs C &amp; D</u>	<u>IRA E</u>	<u>AGE</u>	<u>IRAs A &amp; B</u>	<u>IRAs C &amp; D</u>	<u>IRA E</u>
70	3.65%	5.88%	5.88%	81	5.59%	16.67%	10.31%
71	3.78%	6.25%	6.13%	82	5.85%	20.00%	10.99%
72	3.91%	6.67%	6.45%	83	6.14%	25.00%	11.63%
73	4.05%	7.14%	6.76%	84	6.46%	33.33%	12.35%
74	4.21%	7.69%	7.09%	85	6.76%	50.00%	13.16%
75	4.37%	8.33%	7.46%	86	7.10%	100.00%	14.08%
76	4.55%	9.09%	7.87%	87	7.47%	empty	14.93%
77	4.72%	10.00%	8.26%	88	7.88%		15.87%
78	4.93%	11.11%	8.77%	89	8.33%		16.95%
79	5.13%	12.50%	9.26%	90	8.78%		18.18%
80	5.35%	14.29%	9.80%	91	9.26%		19.23%
				92	9.81%		20.41%

**\*Payouts "B" and "E" are only available to a surviving spouse.** Other payouts are available to anyone.

## 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). Although the life expectancy of a 80 year old is 10 years (i.e., to age 90), Ms. Widow in fact lived to age 92. Whereas the law requires two IRAs (IRAs C and D) to be empty by age 90, amounts could still be in the 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 -** *A stretch 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 (where the required distributions are based on the age of the oldest beneficiary of the trust. 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.

<u>AGE</u>	<u>IRAs A &amp; B</u>	<u>IRAs C &amp; D</u>	<u>IRA E</u>	<u>IRA CRT</u>
80	5.35%	9.80%	9.80%	5.00%
81	5.59%	10.87%	10.31%	5.00%
82	5.85%	12.20%	10.99%	5.00%
83	6.14%	13.89%	11.63%	5.00%
84	6.46%	16.13%	12.35%	5.00%
85	6.76%	19.23%	13.16%	5.00%
86	7.10%	23.81%	14.08%	5.00%
87	7.47%	31.25%	14.93%	5.00%
88	7.88%	45.45%	15.87%	5.00%
89	8.33%	83.33%	16.95%	5.00%
90	8.78%	100.00%	18.18%	5.00%
91	9.26%	empty	19.23%	5.00%
92	9.81%		20.41%	5.00%

**\*Payouts "B" and "E" are only available to a surviving spouse.** Other payouts are available to anyone.



**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 also Secs. 402(c)(9) and 408(d)(3)(C)(ii)(II). **IRA C:** Sec. 408(d)(3)(C) and Reg. Sec. 1.401(a)(9)-5, Q&A 5(a)(1)(i). **IRA D:** Reg. Sec. 1.401(a)(9)-5, Q&A 7(c)(3), Example 1. **IRA E:** Reg. Sec. 1.401(a)(9)-5, Q&A 7(c)(3), Example 2. The life expectancies are from Reg. Sec. 1.401(a)(9)-9, Table A.

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

**IRAs A & B:** IRAs A & B can become "stretch IRAs," where payments are made over the life expectancy a beneficiary selected by Ms. Widow. Reg. Sec. 1.401(a)(9)-5, Q&A 5(a)(1)(I).

**IRA E:** After Ms. Widow's death, payments from IRA E must be completed over a term of years based on the life expectancy of someone who was her age in the year of her death. Since she died at age 92, payments must be made over no less than 4.9 years. Reg. Sec. 1.401(a)(9)-5, Q&A 5(c)(2).

**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 be able to get the minimum 10% charitable deduction necessary for the trust to qualify as a CRT.

## **IRS Private Letter Rulings - 2014 - 2017**

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

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

- \* 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)
  - \* PLR 201437029 (June 05, 2014)

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

- \* 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)

*The IRS fee for a general private letter ruling request increased from \$19,000 to \$28,300 in 2015. Rev. Proc. 2015-1*

**COMBINATION OF *FEDERAL* ESTATE AND INCOME TAXES ON INCOME IN RESPECT OF A DECEDENT – (Year 2018). *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 2018, 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.