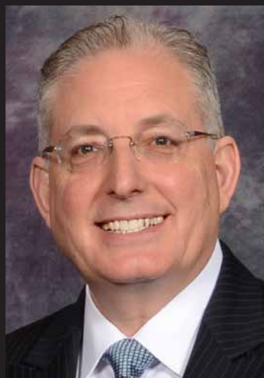

ED SLOTT'S IRA ADVISOR

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Tax & Estate Planning For Your Retirement Savings

Top IRA Rulings of 2014

"In 2014, the U.S. Government Accounting Office (GAO) released a report on IRAs," says Jeffrey Levine, CPA, an IRA technical consultant with Ed Slott and Company. "The GAO estimated that over 42 million taxpayers have IRAs, but only about 630,000 of those taxpayers had aggregate IRA balances of $1 million or more."

As Levine points out, many advisors are competing for the relatively few clients with such large IRAs. "To get those clients, and to keep them," he says, "you need to be up on your game." Part of being game ready is keeping up with current IRA rulings, such as those that appeared in 2014.

> **Part of being game ready is keeping up with current IRA rulings.**

Here are last year's top IRA rulings...

The Bobrow Decision and the "New" Once-Per-Year Rollover Rule

A well-established IRA practice allows clients to complete 60-day rollovers from one IRA to another. For instance, if Ed Brown needs some cash for a short time, he can pull the money from his IRA. As long as Ed puts the money back within 60 days, there's no harm, no foul, and no tax bill.

But rollovers aren't always that simple, as illustrated by a 2014 Tax Court decision (*Bobrow, et ux. v. Commissioner*, TC Memo 2014-21, Docket No. 7022-11, 1/28/14). Tax attorney Alvan Bobrow took distributions from two IRAs and replaced them both within 60 days from other accounts. Bobrow thought the IRS had approved these tactics.

The Tax Court didn't agree, ruling against Bobrow. According to the decision, "Regardless of how many IRAs he or she maintains, a taxpayer may make only one nontaxable rollover contribution within each one-year period."

Thus, the Tax Court ruled that the one-rollover-per-year rule applies to all of a taxpayer's IRAs in aggregate rather than to each IRA separately. "This decision conflicted with IRS Publication 590, which treated each IRA separately for purposes of this rollover limitation," says Michelle Ward, a partner with

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CAUTION! NEW 2015 RETIREMENT TAX RULES ADVISORS MUST KNOW
ED SLOTT'S TOP 10 ROLLOVER MISTAKES
SEE PAGE 8 FOR MORE DETAILS

WHAT'S INSIDE?

Keebler & Associates, a tax advisory and CPA firm in Green Bay, Wisconsin.

"Proposed regulations also treated each IRA separately," says Bruce Steiner, an attorney with the law firm Kleinberg, Kaplan, Wolff & Cohen in New York. "It's possible that the IRS challenged Bobrow because he executed a series of rollovers that looked like a permanent loan from an IRA."

As Michael J. Jones, partner in the accounting firm Thompson Jones in Monterey, California, points out, "If the Court had sided with the taxpayers on all of the distributions, Bobrow and his wife would have had the use of IRA money for a period of 169 days. This seems to be a close cousin to check kiting."

Steiner mentions another aspect of this decision: a rollover by Bobrow's wife also was disallowed. "She put the money back into her IRA on day 61," says Steiner "If taxpayers are going to do a 60-day rollover, they should know how to count."

Post-Bobrow Takeaways for Advisors

"One lesson here is that advisors can't rely on IRS publications."

- Bruce Steiner

"One lesson here is that advisors can't rely on IRS publications," says Steiner. "That's also true for proposed regulations, unless the IRS explicitly states you can do so. The Court cited the language of the law, which is what counts."

The consequences of such missteps can be dire. If a rollover is invalid, the withdrawal will be treated as a taxable withdrawal, possibly subject to a 10% penalty before age 59½. And there might be more bad news.

"For those who run afoul of *Bobrow*, the other shoe will drop when the IRS, based on the Court's holding, claims that disallowed rollovers constitute excess contributions and assesses the 6% excise tax," says Jones. "The Tax Court has so held before and has been sustained on appeal."

Soon after this Tax Court decision, the IRS published Announcement 2014-15. In addition to announcing the revision of Publication 590 and the withdrawal of the related proposed regulations, the announcement stated, "These actions….will not affect the ability of an IRA owner to transfer funds from one IRA trustee directly to another, because such a transfer is not a rollover and, therefore, is not subject to the one-rollover-per-year limitation."

According to Jones, direct transfers are the best route for moving IRA money, if that's possible. "Rollovers, in which taxpayers take funds from their IRAs, are always dangerous. We see many requests for IRS private letter rulings (PLRs) involving relief from the 60-day rule."

IRS Answers Some Questions in Post-Bobrow Guidance, Others Still Unanswered

As a further follow-up to the Tax Court ruling, the IRS said in Announcement 2014-32 that it will apply this rollover aggregation rule only to distributions occurring after 2014.

Jones says this is the key portion of that announcement: "As a transition rule for distributions in 2015, a distribution occurring in 2014 that was rolled over is disregarded for purposes of determining whether a 2015 distribution can be rolled over…, provided that the 2015 distribution is from a different IRA that neither made nor received the 2014 distribution. In other words, the *Bobrow* aggregation rule, which takes into account all distributions and rollovers among an individual's IRAs, will apply to distributions from different IRAs only if each of the distributions occurs after 2014."

Moreover, IRS Announcement 2014-32 helpfully reminds us that there's no similar one-per-year rule for rollovers from non-IRA plans such as 401(k), 403(b), or 457(b) plans.

Yet other questions remain. "Announcement 2014-32 does not say whether the one-per-year rule applies to spousal rollovers," says Seymour Goldberg, senior partner at Goldberg & Goldberg, a law firm in Woodbury, N.Y. Unlike non-spouse beneficiaries, a surviving spouse can roll over the deceased spouse's IRA to his or her own name.

"Announcement 2014-32 does not say whether the one-per-year rule applies to spousal rollovers."

- Sy Goldberg

For example, suppose that Jim Carson dies in 2015 with two IRAs, held at different firms. For both IRAs, Jim's widow Karen is the sole beneficiary. Karen, the younger spouse, would like to roll those IRAs into her own name, for more tax deferral. If Karen executes two 60-day IRA rollovers within a 12-month period, will one be disallowed under the new rule, resulting in a taxable distribution?

"I believe that would be the case," says Goldberg. "Some informal discussions with IRS officials indicate that is their belief, too, although there has not been an announcement on this topic."

Goldberg says that advisors should tell clients to “play it safe,” in these situations. “It’s better to move the IRA from the decedent’s name to the surviving spouse’s name with a direct transfer between IRA custodians.” For all taxpayers, direct transfers avoid the once-per-year limit. If some cash is needed temporarily, one of those IRAs can be rolled over within the 60-day window. The other can be moved to the surviving spouse’s name with a direct transfer.

Inherited IRAs and Bankruptcy Protection

In a unanimous decision in 2014, the U.S. Supreme Court ruled that funds held in an inherited IRA are not “retirement funds,” as defined in the federal bankruptcy code (*Clark et ux. v. Rameker, Trustee, et al*., No. 13-299, 6/12/14). “While the bankruptcy protection afforded to ERISA qualified plans as well as contributory and rollover IRAs is clear, the protection given to inherited IRAs wasn’t well-defined until this case was handed down,” says Ward.

Here, the Court rejected the debtor’s claim that funds in an inherited IRA are retirement funds because they were originally set aside for retirement. “That would render the term ‘retirement funds,’ as used in this context, superfluous,” says Ward. (Advisors should keep in mind that this Supreme Court decision applies only to bankruptcy cases, while other types of creditors’ claims involving inherited IRAs usually will be subject to state law.)

"To obtain asset protection for children and other heirs, IRAs should be left in trust.”

- Bob Keebler

“*Clark v. Rameker* leaves no doubt that to obtain asset protection for children and other heirs, IRAs should be left in trust,” says Bob Keebler, who heads Keebler & Associates. If such a trust is discretionary, with no distribution requirements, the beneficiaries’ creditors typically won't be able to force distributions from the trust.

“For our clients’ estate plans, we usually provide for their children in trusts,” says Steiner. “Unless the account is very small, that should be true for IRAs as well. A sizable IRA should be treated just like any other important asset.”

As Steiner puts it, bankruptcy disputes are “only the tip of the iceberg,” when it comes to asset protection. “Leaving assets in trust also can protect them from non-bankruptcy creditors, spouses in divorce actions, and estate tax.”

What if one spouse inherits an IRA from the other and maintains it as an inherited IRA, perhaps to avoid a

Summary of Key Rulings

- The Tax Court decided that the one-per-year rollover rule applies in aggregate to *all* of a client’s IRAs. This was in contrast to the IRS’ longstanding interpretation of the rule, which said that it applied separately to each of an IRA owner’s accounts (*Bobrow*).
- Trustee-to-trustee transfers will continue to be unaffected by the once-per-year rollover rule (Ann. 2014-15).
- 2014 distributions will be disregarded with respect to the new interpretation of the once-per-year rollover rule (Ann. 2014-32).
- Inherited IRAs do *not* receive bankruptcy protection under federal law (*Clark*).
- A 60-day partial IRA rollover was allowed by the Court of Appeals after it had previously been disallowed by the Tax Court (*Haury*).
- An attempt to circumvent a custodian’s rules and own real estate with IRA funds failed when the real estate was determined to be held outside of an IRA (*Dabney*).
- The IRS created a new type of annuity that is excluded from RMD calculations (final QLAC regulations).
- Rolling money into an employer’s retirement plan was made easier after IRS outlined safe-harbor procedures for plans accepting such rollovers (Revenue Ruling 2014-9).
- Aftertax plan funds can be converted to Roth IRAs tax free (Notice 2014-54).
- A trust was allowed to assign an inherited IRA to 18 trust beneficiaries, who were able to take distributions over the decedent’s remaining life expectancy (PLR 201430022).
- There is no extension of time for beneficiaries to begin receiving RMDs (PLRs 201437025, 201437034 and 201417027).
- A court-ordered return of IRA funds to a decedent’s estate resulted in a nontaxable transfer that was not subject to gift tax (PLR 201432029).
- Two trusts with pecuniary bequests had two very different tax outcomes (PLRs 201444024 and 201438014).

10% penalty on distributions before age 59½? According to Keebler, there is no clear answer as to whether such an IRA would be vulnerable to creditors in bankruptcy. If that's a significant issue, a surviving spouse might want to execute a spousal rollover to protect the account.

Court of Appeals Slams Tax Court for Its 60-Day Rollover Decision

In a counterpoint to the *Bobrow* decision, Harry Robert Haury won a partial victory on a rollover ruling [*Haury v. Commissioner*, No. 13-1780, 8th Cir. (May 12, 2014), rev'g in part T.C. Memo 2012-215 (2012)]. The IRS pursued Haury for large amounts of unpaid tax, asserting – among other issues – over $400,000 of taxable IRA withdrawals.

Haury responded by claiming, in part, a $120,000 IRA rollover. He had withdrawn $120,000 on February 15 and another $168,000 on the following April 9, then contributed $120,000 to his IRA as a rollover on April 30 of that year.

"The Eighth Circuit Court of Appeals admonished the Tax Court for that part of the decision and upheld the $120,000 rollover."

- Michael Jones

In essence, the IRS matched the two $120,000 amounts and disallowed the rollover because the span between the February 15 withdrawal and the April 30 contribution exceeded 60 days. The Tax Court went along with the IRS argument. "But, on appeal," says Jones, "the Eighth Circuit Court of Appeals admonished the Tax Court for that part of the decision and upheld the $120,000 rollover, because the April 30 contribution occurred within 60 days of the April 9 withdrawal."

The IRS may be taking a hard look at IRA rollovers, Jones concludes, but it isn't allowed to cherry-pick dates to back up its arguments.

Taxpayer's "IRA" Investment Was Not Actually an IRA Investment

The importance of following IRA rules was illustrated in one 2014 Tax Court case (*Dabney*, T.C. Memo 2014-108, 6/15/14). Guy Dabney had a traditional IRA at Charles Schwab; he learned of a promising real estate investment and also discovered via Internet research that investment property can be held in an IRA.

When Dabney called Schwab, he was told that Schwab did not allow such investments in its IRAs. Undeterred, Dabney withdrew $114,000 from his IRA.

Dabney had Schwab wire the money to the title company handling the property sale. He even had the title company list "Guy M. Dabney Charles Schwab & Co. Inc Cust. IRA Contributory" as the property owner. Eventually, Dabney sold the property at a slight gain and deposited the proceeds into his Schwab IRA.

Meanwhile, Schwab had treated the $114,000 withdrawal as a taxable distribution, which also was subject to a 10% penalty because Dabney was younger than 59½. When the IRS demanded tax and the matter wound up in Tax Court, Dabney produced no evidence that the title company was an IRA custodian.

The Tax Court upheld the income tax and early withdrawal penalty, finding that, "…. in its role as an IRA trustee, Charles Schwab had the power to prohibit the purchase and holding of real property and that Mr. Dabney's Charles Schwab IRA was not capable of holding real property."

"Just titling an asset as being owned by an IRA doesn't mean the money is actually in an IRA."

- Jeff Levine

As Levine points out, some IRA custodians permit alternative investments such as real estate. "If Dabney had transferred money from his Schwab IRA to a custodian with a different policy, he could have done this transaction without any tax problem," Levine notes. "However, just titling an asset as being owned by an IRA doesn't mean the money is actually in an IRA."

Final Regulations Released for Qualifying Longevity Annuity Contracts

Last July, the IRS released final regulations for qualifying longevity annuity contracts (QLACs). Such annuities have a deferred starting date: a client might buy the annuity in 2015 but not start to receive periodic cash flow until a later date, perhaps many years in the future.

"The deferred starting date of such contracts posed an RMD problem," says Jones. Seniors had to distribute each year's RMD related to the value of that contract. In practice, all of the taxpayer's RMD for that year had to come from retirement account funds not held within the annuity.

Suppose that Laura Matthews, age 72, had a $300,000 IRA, including an annuity that will begin paying when she's 85. Say the annuity was valued at $50,000. Under the old rules, Laura would need to use the other $250,000 to take RMDs from her $300,000 IRA, even though the annuity couldn't be tapped for RMDs.

The 2014 regulations exclude the annuity contract from RMDs, if it meets specified conditions. Annuities not meeting those conditions will continue to be considered for RMD purposes. “Deferred annuities passing the new tests are QLACs,” says Jones, “which can be new purchases or converted contracts.”

Here are a few of the key QLAC conditions:

• A life annuity must start paying out no later than the first day of the next month following the employee’s attainment of age 85.

• The premiums paid can’t exceed 25% of the applicable retirement account.

• The maximum total premium payment is $125,000 per taxpayer.

Besides IRAs, QLACs may be held in defined contribution plans, 403(b) plans, and 457(b) governmental plans. QLACs are not permitted in Roth IRAs or defined benefit plans.

“The purpose of a life annuity is to hedge against living too long,” says Steiner. “Without the hedge of an annuity, people might either run out of money, if they live a long time, or live meagerly in retirement for fear of running out of money in old age.”

An annuity scheduled to start late in life may protect against both unsatisfactory outcomes for some clients. “If the annuity won’t begin until very late in life, perhaps at age 85, a QLAC might be considered a form of long-term care insurance,” says Steiner, alleviating concerns about paying huge amounts for care.

However, there is an economic cost to buying such an annuity. “The tax benefit of the QLAC – not having to take RMDs on the contract value – helps to offset some of the economic cost,” says Steiner. “If the QLAC is explained properly, clients may want to have some of their retirement fund in these annuities.”

Easier IRA-to-Plan Rollovers Create More Tax-Free Roth IRA Conversion Opportunities

Roth IRA conversions typically are taxable, or at least partially taxable. That’s true even if *some* of the dollars being converted are aftertax.

For instance, suppose that Paula King has $100,000 in a traditional IRA, her only IRA, which includes $30,000 of aftertax contributions. To fill out her tax bracket, in December 2015 Paula converts $30,000 to a Roth IRA.

Under the so-called "cream-in-the-coffee tax treatment," any Roth IRA conversion will be 70% taxable and 30% nontaxable, in line with the $70,000/$30,000 split between pretax and aftertax dollars. Thus, Paula’s $30,000 Roth IRA conversion generates $21,000 of taxable income: 70% of $30,000.

Make that, *almost* any Roth IRA conversion will have cream-in-the-coffee treatment. “Under the tax code, you can roll pretax money from an IRA to an employer’s qualified retirement plan, but aftertax money can’t be rolled to the plan,” says Natalie Choate, an attorney with the Boston law firm Nutter McClennen & Fish.

Assuming that Paula works for a company with a qualified plan such as a 401(k), she could roll her $70,000 of pretax money to that plan. Subsequently, Paula will have only $30,000 of aftertax money in her traditional IRA, so she can convert that amount to a Roth IRA without owing any tax.

“Under the tax code, you can roll pretax money from an IRA to an employer’s qualified retirement plan."

- Natalie Choate

“Unfortunately,” says Choate, “many people had been unable to use this tax break because qualified plans often didn’t accept IRA rollovers. That changed last April 21, when the IRS issued Rev. Rul. 2014-9, which spelled out how plan administrators can safely accept rollovers.” Rev. Rul. 2014-9 covers two situations. One is a plan-to-plan rollover while the other is a rollover from a traditional IRA (not an inherited IRA) to a qualified plan.

“As the Revenue Ruling explains, Paula should have her IRA custodian send a check for most or all of the pretax money in her IRA to the qualified plan,” says Choate. “The check should come with a certification from Paula to the administrator of the qualified plan, stating that this is a rollover of only pretax dollars.”

Now that a roadmap from the Revenue Ruling is in place, Choate adds, administrators are more willing to accept IRA-to-plan rollovers. Once this rollover is complete and Paula’s traditional IRA holds virtually no pretax dollars, she can convert it to a Roth IRA and owe little or no income tax.

“In some situations,” says Choate, “a client who has done an IRA-to-plan rollover will want to roll pretax money back to a traditional IRA. If so, it’s vital to wait at least until the calendar year after the Roth IRA conversion. Rolling back to a traditional IRA in the year of the conversion will trigger the cream-in-the-coffee rule on the Roth IRA conversion.”

IRS Authorizes Tax-Free Conversions of Aftertax Plan Funds

As indicated, Rev. Rul. 2014-9 may benefit clients who have aftertax money in a traditional IRA and the ability to roll those dollars into a qualified plan. The IRS followed up on September 18 by issuing Notice 2014-54, which can help clients who have aftertax as well as pretax money in an employer plan, including 401(k), 403(b), or 457(b) government plans.

"The IRS now allows taxpayers to break out the aftertax portion of money."

- Michelle Ward

IRS Notice 2014-54 provides rules on the allocation of disbursements to multiple destinations from a single qualified plan. "The IRS now allows taxpayers to break out the aftertax portion of money within a qualified plan and convert it to a Roth IRA, tax free," says Ward.

Previously, there was uncertainty as to whether this could be done. The new IRS guidelines apply to distributions made on or after January 1, 2015. However, taxpayers are permitted to apply the proposed regulations to distributions that were made on or after September 18, 2014.

Suppose that Len Roberts has $400,000 in his 401(k) plan at work, including $100,000 of aftertax contributions. Len is planning to retire this year.

Under Notice 2014-54, which represents a revision of a previous IRS stance, Len can make separate distributions of pretax and aftertax money. "As long as the split transfer is part of the same distribution event, Len can send his aftertax money directly to a Roth IRA without owing income tax," says Choate.

Concurrently, Len should send his pretax dollars to a traditional IRA, deferring the tax until money from that account is withdrawn or converted (in a taxable event) to his Roth IRA.

However, if Len first rolls his entire 401(k) balance to a traditional IRA, he may lose the opportunity for a tax-free Roth IRA conversion. The exception: if Len subsequently has the opportunity to roll his pretax dollars to a qualified plan, he can then convert the aftertax dollars to a Roth IRA without owing tax, under Rev. Rul. 2014-9, as explained above.

Private Letter Rulings

PLR 201430022. This PLR involved a decedent's four IRAs, which were left to a trust. The IRAs were consolidated into one IRA, with 18 individuals as the beneficiaries of the trust holding the IRA.

"In this PLR, the IRS allowed an inherited IRA, which had a trust as the beneficiary, to be transferred tax-free *out* of the trust, into separate inherited IRAs for each of the trust's beneficiaries," says Joe Cicchinelli, CPA, an IRA technical consultant at Ed Slott and Co. "Therefore, the trust was no longer controlling those IRA funds. This process is known as assigning the funds to the trust's beneficiaries. Advisors should check to see if a trust is assignable after death, if it's desirable to shift control from a trust to individual beneficiaries."

"Advisors should check to see if a trust is assignable after death."

- Joe Cicchinelli

Nevertheless, Cicchinelli notes that no separate account treatment was available for RMD purposes, because the trust originally was the IRA beneficiary. "Assuming the trust is a see-through trust, the single life expectancy of the oldest trust beneficiary generally must be used for each of the beneficiaries," he says. "In this case, though, because the IRA owner died after his required beginning date and the oldest trust beneficiary was older than the IRA owner, the deceased IRA owner's single life expectancy was used."

PLRs 201437025, 201437034, and 201417027. The first two PLRs on this list involved the same cast of characters: A, who died at age 77 in 2006 with an IRA that included some annuities; B, the decedent's "long-time friend," perhaps a girlfriend; C, the decedent's ex-wife, who was entitled to be the beneficiary of a portion of A's IRA; and D, an individual who provided care for A after major surgery. At A's death, B was the primary beneficiary of his IRA while D was the beneficiary for most of the annuities.

"After A's death, the three women fought over the proceeds of the IRA," says Beverly DeVeny, an IRA technical consultant with Ed Slott and Co. "The caretaker cashed out, relinquishing her claims to the remainder of the IRA money. The other two filed suit and the litigation went on for years before a settlement was reached."

As a result of the prolonged dispute, RMDs were either not paid in full or not paid at all for several years. In these two PLRs, B and C both requested the ability to start RMDs in 2014, rather than in 2007, the year after A's death. They also requested a waiver of the 50% penalty for insufficient RMDs and clarification of the RMD calculation.

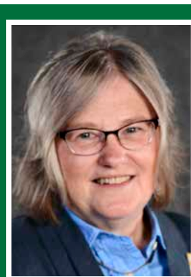
"The IRS did not agree to let them start RMDs in 2014," says DeVeny. "The rulings also said that RMDs from some of the annuities must be taken over the life expectancy of D. Even though D had since disclaimed her interest in those annuities, D was still the designated beneficiary on September 30 of the year after A's death."

A similar issue arose in PLR 201417027, in which the decedent (call him Chuck) was the sole participant in a profit sharing plan and a money-purchase plan. He had named his daughters, Ann and Betty, as beneficiaries of both plans.

Here, Ann and Betty said that the executor of Chuck's estate did not notify them about the beneficiary designations until "sometime later." Consequently, they asked for an extension of time to start RMDs.

"The date RMDs must begin is set by tax law and regulations."

- Beverly DeVeny



"Again," says DeVeny, "the IRS denied the request. The date RMDs must begin is set by tax law and regulations."

In all of these PLRs, taxpayers were instructed to pay the RMD shortfalls by the end of 2014. "However," says DeVeny, "the 50% penalties were waived because of the circumstances involved. The taxpayers were told to file IRS Form 5329, requesting a penalty waiver, and to attach a copy of the relevant PLR."

PLR 201432029. In this somewhat complex private letter ruling, the original IRA owner left an IRA and a SEP IRA to Taxpayer C, who established inherited IRAs. Sometime later, C died and left both IRAs to Taxpayer A, who then set up new inherited IRAs.

Meanwhile, litigation was under way. Taxpayer C's estate sued to recover the IRAs from Taxpayer A; a charity that had been named as residuary beneficiary of a trust established by taxpayer C also sued to obtain the IRAs.

Ultimately, a court ordered the return of all the IRA funds to Taxpayer C's estate. Then Taxpayer A requested this PLR, asking the IRS to agree there was no taxable distribution and thus no income tax on the IRA transfers, and no taxable gift, either. The IRS granted this request, finding that Taxpayer A never owned the IRAs in question. "This PLR might be a harbinger of things to come," says Jones. "More people are dying with large amounts in IRAs, so there probably will be disputes and litigation over the money involved."

As Jones explains, most of these disagreements will be settled rather than resolved in a trial, with the settlement subject to court approval. The tax treatment of such settlements may be uncertain. "In this PLR," says Jones, "I'm not sure how the IRS reached its conclusion that Taxpayer A never owned those IRAs and thus owed no tax. It's not clear what legal theory was followed."

For advisors representing clients who inherit IRAs, caution is recommended. If there is any uncertainty as to the beneficiary's rights, it may be better to leave the account in place until the clouds pass. Retitling the inherited IRA could eventually trigger harsh tax consequences.

PLR 201444024 and PLR 201438014. "We often see an estate plan that includes a charity as an IRA beneficiary," says Mary Kay Foss, director at Sweeney Kovar, an accounting firm in Danville, California. "When an estate or trust contains IRAs, using the IRA to fulfill the charitable bequest can be tax-effective." Pretax IRA money is left to a tax-exempt charity, leaving more aftertax assets for human heirs.

In PLR 201444024, a trust was established at the death of someone we'll call Frank, and the trust was the IRA beneficiary. "There were two pecuniary [specific dollar amount] bequests included in Frank's will," says Foss, "with the balance of the trust to be paid immediately to a charity."

This PLR requested that the assignment of the IRA to the charity would not be treated as income in respect of a decedent (IRD), which would be taxable to the trust. The IRS allowed the trust to re-title the IRA in the name of the charity, which was a nontaxable transfer.

"When an estate or trust contains IRAs, using the IRA to fulfill the charitable bequest can be tax-effective."

- Mary Kay Foss

"Another trust did not fare so well," says Foss. "In PLR 201438014, the trust was to make pecuniary gifts to two charities named in the agreement. In this instance, the trustee went to court and had the trust reformed to specify that the charitable gifts would be direct bequests and not IRD."

Besides requesting a ruling that the payments would not constitute IRD, this PLR also asked for a fallback: if the distributions are IRD, then a charitable deduction would also be available.

The IRS rejected these requests, citing a number of court cases as well as the regulations under section 691 of the tax code, on IRD. "The IRS determined that the trust was reformed to obtain tax benefits rather than resolve a dispute so the reformation was not respected," says Foss.

The original trust agreement did not have language that allowed the trust to avoid IRD treatment or claim a charitable deduction. As always, it makes sense to deal with experienced, knowledge professionals when dealing with trusts and sophisticated estate planning techniques. ■

ED SLOTT'S IRA Advisor

Editor - in - Chief
Ed Slott, CPA

Contributing Writers
Beverly DeVeny
Jeffrey Levine
Joseph Cicchinelli

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Ed Slott's IRA Advisor, Inc.
100 Merrick Road, Suite 200E
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