

CHARITABLE PLANNING WITH RETIREMENT ACCOUNTS: STRATEGIES, TRAPS AND SOLUTIONS

PRESENTER:

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Presenter



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- Teaches courses in the areas of federal taxation, business organizations, retirement plans and tax-exempt organizations
- Chair of the American Bar Association's Committee on Lifetime and Testamentary Charitable Gift Planning (Section of Probate and Trust)
- Serves on the editorial board of *Trusts and Estates* magazine
- Frequent speaker at legal and educational programs and has been quoted in numerous publications, including *The Wall Street Journal*, *Forbes*, *MONEY Magazine* and *The Washington Post*
- Received his undergraduate degree in economics from Northwestern University and dual law and accounting degrees from the University of Wisconsin

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CHARITABLE PLANNING WITH RETIREMENT ACCOUNTS: STRATEGIES, TRAPS AND SOLUTIONS

- “Charitable IRA Rollover”
- IRAs in Second Marriages – CRT Solution
- IRD in Taxable Estates
 - Double taxation – estate tax & income tax
 - “Leave it to charity”
- Income-Based Charitable Bequests

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Charitable IRA Rollover -- Lifetime Gifts from IRAs –

- Law Permanent! 2015 PATH Act Dec 20, 2015
- Eligible Donors:
 - Won’t report charitable gifts from IRAs as taxable income
 - Not entitled to charitable income tax deduction

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Charitable IRA Rollover -- Lifetime Gifts from IRAs --

- IRA owner must be over age 70 ½
- Maximum: \$100,000 per year
- Yes! Charitable gift satisfies required minimum distribution requirement from IRA!

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WHO WINS?

- Donors who do not itemize tax deductions (“standard deduction”)

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- *Impact of 2017 tax proposals*

* Double std ded: \$12,700 single - \$25,400 joint

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- *Impact of 2017 tax proposals*

* Double std ded: \$12,700 single - \$25,400 joint

* Eliminate all itmz deduct except charitable & mortgage interest (controversy: state & local tax)

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WHO WINS?

- Donors who do not itemize tax deductions (“standard deduction”)
- *Impact of 2017 tax proposals*
 - * Double std ded: \$12,700 single - \$25,400 joint
 - * Eliminate all itmz deduct except charitable & mortgage interest (controversy: state & local tax)
- Bottom Line: Very few people will itemize & get tax benefit from charitable gifts

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WHO WINS?

- Donors who do not itemize tax deductions (“standard deduction”)
- *Impact of 2017 tax proposals*
 - Bottom Line: Very few people will itemize & get tax benefit from charitable gifts
 - TAX PLANNING

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WHO WINS?

- Donors who do not itemize tax deductions (“standard deduction”)
- *Impact of 2017 tax proposals*
- Bottom Line: Very few people will itemize & get tax benefit from charitable gifts
- TAX PLANNING
 - * 2017: Accelerate charitable deductions to get tax savings
 - * 2018 & later – Charitable IRA Rollover more important

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WHO WINS?

- Donors who do not itemize tax deductions (“standard deduction”)

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WHO WINS?

- Donors who do not itemize tax deductions (“standard deduction”)
- Donors who live in states where state income tax laws have no charitable deduction

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WHO WINS ?

- Donors who incur taxes as their income increases
 - social security benefits taxable
 - Medicare “B” premiums
 - 3.8% health tax if $AGI > \$200,000$
 - lose 3% of itemized deductions if $AGI > \$260,000$

LEGAL REQUIREMENTS

- Over age 70 ½
- IRA (only) – not 403(b), 401(k), etc.
- “Directly” from the IRA to charity
 - OK to send check to donor who forwards to charity

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LEGAL REQUIREMENTS

- ELIGIBLE CHARITY – Public charity or private operating foundation
 - however, a donor advised fund or supporting org is not eligible
- Must qualify for full charitable deduction – no dinners; no CGAs

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LEGAL REQUIREMENTS

- Taxable part of IRA distributions (only)
 - tax-free distributions protected
- Donor must have letter from charity that donor received no goods or services in exchange for the gift

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TECHNICAL ISSUES

- Yes! Charitable IRA gifts can satisfy legally binding pledges!
- Joint return? Up to \$200,000
- No withholding taxes
- Beneficiary of an inherited IRA who is over age 70 ½ can make charitable gifts of required distributions

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CHARITABLE PLANNING WITH RETIREMENT ACCOUNTS: STRATEGIES, TRAPS AND SOLUTIONS

- “Charitable IRA Rollover”
- IRAs in Second Marriages –
The CRT Solution
- IRD in Taxable Estates
 - Double taxation – estate tax & income tax
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IRA Distributions After Death

After death, must start liquidating account

- Tax planning for family members who inherit: *DEFER* distributions as long as possible – greater tax savings
- “Stretch IRA” – make payments over beneficiary’s life expectancy

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IRA Distributions After Death

“life expectancy”

Oversimplified: Half of population will die before that age, and half will die after

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REQUIRED MINIMUM DISTRIBUTIONS *LIFE EXPECTANCY TABLE*

<u>Age of Beneficiary</u>	<u>Life Expectancy</u>	
30	83	53.3 more years
40	83	43.6
50	84	34.2
60	85	25.2
70	87	17.0
80	90	10.2
90	97	6.9

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REQUIRED MIN. DISTRIBUTIONS
LIFE EXPECTANCY TABLE
“STRETCH IRAS”

<u>Age of Beneficiary</u>	<u>Life Expectancy</u>
30	53.3 more years
40	43.6
50	34.2
60	25.2
70	17.0
80	10.2
90	6.9

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REQUIRED MIN. DISTRIBUTIONS
LIFE EXPECTANCY TABLE
“STRETCH IRAS”

<u>Age of Beneficiary</u>		<u>Life Expectancy</u>
30	1.9%	53.3 more years
40	2.3%	43.6
50	2.9%	34.2
60	4.0%	25.2
70	5.9%	17.0
80	10.0%	10.2
90	18.8%	5.5

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SENATE PROPOSAL: LIQUIDATE ALL INHERITED IRAs IN FIVE YEARS

- 2012 – Highway Bill – not enacted
- President Obama budget proposal
- June, 2014 – Sen. Wyden adds to Highway Bill
- Sept 2016 – Senate finance committee action

EXCEPTIONS

- -- Spouse -- minor child -- disabled
- -- Person not more than ten years younger

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REQUIRED MINIMUM DISTRIBUTIONS

Example: Death at age 80?

CURRENT LAW: *Life Expectancy Table*

<u>Age of Beneficiary</u>	<u>Life Expectancy</u>	
30	1.9%	53.3 more years
40	2.3%	43.6
50	2.9%	34.2
60	4.0%	25.2
70	5.9%	17.0
80	10.0%	10.2
90	10.0%	6.9 * [10.2 yrs]

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REQUIRED MINIMUM DISTRIBUTIONS

Example: Death at age 80?

PROPOSED: FIVE YEARS if >10 yrs younger

<u>Age of Beneficiary</u>		<u>Life Expectancy</u>
30		5 years
40		5
50		5
60		5
70	<i>5.9%</i>	17.0
80	<i>10.0%</i>	10.2
90	<i>10.00%</i>	6.9 * [10.2 yrs]

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SENATE PROPOSAL: LIQUIDATE ALL INHERITED IRAs IN FIVE YEARS

IMPLICATIONS FOR CHARITIES

Donors more likely to consider

- Outright bequests
- Retirement assets to tax-exempt CRT
 - Child for life
 - Spouse & children (no marital deduction)

IRAs in SECOND MARRIAGES

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IRAs in SECOND MARRIAGES

Surviving spouse has an option
that no other beneficiary has:

a rollover of deceased spouse's
retirement assets to her or his own
new IRA (creditor protection, too!)

Other beneficiaries only option:

an inherited IRA

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IRAs in SECOND MARRIAGES

SURVIVING SPOUSE ROLLOVER?

- The surviving spouse sets up a new IRA in her/his own name
- Then the surviving spouse selects the beneficiaries upon death

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IRAs in SECOND MARRIAGES

SURVIVING SPOUSE ROLLOVER?

- The surviving spouse sets up a new IRA in her/his own name
- Then the surviving spouse selects the beneficiaries upon death
- What assurance that a child from the deceased spouse's prior marriage will be named as a beneficiary?

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IRAs in SECOND MARRIAGES

- All IRAs to spouse? Buy some life insurance for children?

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IRAs in SECOND MARRIAGES

- All IRAs to spouse? Buy some life insurance for children?
- Divide IRAs? Some to spouse; some to children from prior marriage

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IRAs in SECOND MARRIAGES

- All IRAs to spouse? Buy some life insurance for children?
- Divide IRAs? Some to spouse; some to children from prior marriage
 - *caution: 401(k) & ERISA plans:*
100% to spouse, unless executes waiver

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IRAs in SECOND MARRIAGES

- All IRAs to spouse? Buy some life insurance for children?
- Divide IRAs? Some to spouse; some to children from prior marriage
- IRAs to a 2-generation charitable remainder trust?

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CHARITABLE REMAINDER TRUST

- Payment to non-charitable beneficiary (ies) for *life* *or* for a *term of years* (maximum 20 years)
- Remainder interest distributed to charity
- *Exempt from income tax*

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2-GENERATION CHARITABLE REMAINDER TRUST

- Typically pays 5% to elderly surviving spouse for life, then 5% to children for life, then liquidates to charity
- Like an IRA, a CRT is exempt from income tax
- No estate tax marital deduction (don't do this if taxable estate)

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2-GENERATION CHARITABLE REMAINDER TRUST

- Can be a solution for *second marriages* when estate is top-heavy with retirement assets. Example:
 - Half of IRA to surviving spouse
 - Other half of IRA to a CRT for 2nd spouse and children from 1st marriage

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2-GENERATION CHARITABLE REMAINDER TRUST

TECHNICAL REQUIREMENTS

- Minimum 10% charitable deduction
 - all children should be over age 30
- CRUT – minimum 5% annual distrib
- Not eligible for estate tax marital deduction
- Charitable intent !

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FREE ARTICLE:

Google search:

SSRN Hoyt Rollover

*Retirement Assets to a Surviving Spouse –
Rollovers and Portability are Your First Choice
.pdf file; easy download; 5 page article*

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FUTURE OF ESTATE TAX ?

<u>Year</u>	<u>Threshold</u>	
2001	\$ 675,000	
2002-2003	\$ 1,000,000	
2004-2005	\$ 1,500,000	
2006-2008	\$ 2,000,000	
2009	\$ 3,500,000	
2010	REPEALED !	[* <i>carryover basis</i>]
2011-2016	\$ 5,000,000	<i>inflation indexed</i>
2017	\$ 5,490,000	<i>inflation indexed</i>

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ESTATE TAX

WHAT IS THE TAX RATE
THAT RICH PEOPLE PAY
ON THEIR INCOME ?

- Income tax?
- Estate tax?

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IF RICH ENOUGH TO PAY ESTATE TAX, CONSIDER CHARITY & PHILANTHROPY.

Combination of income & estate taxes

Income	\$100
Income tax	<u>40</u> (40%) (43.8%?)
Net	\$ 60

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IF RICH ENOUGH TO PAY ESTATE TAX, CONSIDER CHARITY & PHILANTHROPY.

Combination of income & estate taxes

Income	\$100
Income tax	<u>40</u> (40%) (43.8%?)
Net	\$ 60
Estate Tax	<u>24</u> (40%)
Net to Heirs	\$ 36 <i>in 2017</i>

Income in Respect of Decedent

Amounts of income to which a decedent was entitled but which were not includible in gross income before the decedent's death. Sec. 691(a)

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Income in Respect of Decedent

Amounts of income to which a decedent was entitled but which were not includible in gross income before the decedent's death. Sec. 691(a)

- Accrued savings bond interest
- Nonqualified deferred compensation
- **Retirement plan accounts**

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Income in Respect of Decedent

Retirement Plan Accounts

- 1. Sec. 401 – Company plans (401(k))
- 2. Sec. 408 – IRAs
- 3. Sec. 403(b) & 457– (Charity/govt employers)

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Income in Respect of Decedent

Retirement Plan Accounts

- 1. Sec. 401 – Company plans (401(k))
- 2. Sec. 408 – IRAs
- 3. Sec. 403(b) & 457– (Charity/govt employers)
- 4. **Roth** IRAs & 401(k)/403(b)
(Tax-free; not taxable IRD)

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Income in Respect of Decedent

IRD payable to an estate? Double tax:

- Form 706 - Pay estate tax – asset owned at death

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Income in Respect of Decedent

IRD payable to an estate? Double tax:

- Form 706 - Pay estate tax – asset owned at death
- Form 1041 - Pay income tax – IRD is taxable income

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Income in Respect of Decedent

IRD payable to an estate? Double tax:

- Form 706 - Pay estate tax – asset owned at death
- Form 1041 - Pay income tax – IRD is taxable income

* A single payment from a retirement plan to a taxable estate will be taxed twice:

- first on the federal estate tax return
- again on the income tax return, since it is IRD

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IF RICH ENOUGH TO PAY ESTATE TAX, CONSIDER CHARITY & PHILANTHROPY.

Combination of income & estate taxes

Income	\$100
Income tax	<u>40</u> (40%) (43.8%?)
Net	\$ 60
Estate Tax	<u>24</u> (40%)
Net to Heirs	\$ 36 <i>in 2017</i>

What is the Combination of Income Tax & Estate Tax on IRD?

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 Federal Estate Tax (<i>only</i>)		
■ 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 39.6%</u>	
■ Net Income Tax on Income In Respect Of Decedent		<u>(23,760)</u>
■ NET AFTER-TAX AMOUNT TO SON (after about 64% tax rate)		\$ 36,240

Income in Respect of Decedent

IRD payable to an estate? Double tax:

- Form 706 - Pay estate tax – asset owned at death
 - Form 1041 - Pay income tax – IRD is taxable income
- * Argument: If IRD to charity, should be able to claim charitable deduction on both estate T/R and estate's income T/R, if governing instrument has the right instructions**

Income in Respect of Decedent

IRD payable to an estate? Double tax:

- Form 706 - Pay estate tax – asset owned at death
 - Form 1041 - Pay income tax – IRD is taxable income
- * **Argument:** If IRD to charity, should be able to claim charitable deduction on both estate T/R and estate's income T/R, if governing instrument has the right instructions
- * **Law: Tax Reg:** “Yes, IRD qualifies for the charitable income tax deduction” Reg. 1.642(c)-3(a)
- Logic: IRD is both corpus and income

CHARITY & PHILANTHOPY

CLIENT: “ I have no charitable intent !”

CHARITY & PHILANTHOPY

CLIENT: “ I have no charitable intent !”

2014 federal estate tax returns:

All *taxable* estates ?

-- 30% charitable deduction (70% did not)

Taxable estates over \$50 million ?

-- 55% charitable deduction (45% did not)

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CHARITY & PHILANTHOPY

CLIENT: “ I have no charitable intent !”

2014 federal estate tax returns:

All *taxable* estates ?

-- 30% charitable deduction (70% did not)

Taxable estates over \$50 million ?

-- 55% charitable deduction (45% did not)

55% of taxable estates had retirement assets

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CHARITY & PHILANTHOPY

CLIENT: “ I have no charitable intent !”

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CHARITY & PHILANTHOPY

CLIENT: “ I have no charitable intent !”

- “Does your estate have IRD? Then you are already making a charitable gift. You are giving 64%+ to the federal government in taxes (perhaps 80%+ if state income taxes and state estate taxes)”

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HOW TO LEAVE A RETIREMENT ACCOUNT TO BOTH FAMILY & CHARITY

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WHAT CAN GO WRONG ?

TWO WAYS TO MAKE A
CHARITABLE BEQUEST FROM A
RETIREMENT ACCOUNT

- #1 – NAME CHARITY AS
BENEFICIARY OF THE ACCOUNT
- #2 – PAY ACCOUNT TO ESTATE OR
TRUST THAT THEN MAKES A
CHARITABLE BEQUEST

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Form 1041 Charitable Income Tax Deduction for Bequest of IRD?

Problem: There are situations when IRD was in fact distributed to a charity by an estate or trust, but the estate or trust was not allowed to claim a charitable income tax deduction to offset the income from the IRD.

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Form 1041 Charitable Income Tax Deduction for Bequest of IRD?

Problem: There are situations when IRD was in fact distributed to a charity by an estate or trust, but the estate or trust was not allowed to claim a charitable income tax deduction to offset the income from the IRD.

Reason: The governing instrument had no instructions to pay income to a charity.

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Form 1041 Charitable Income Tax Deduction for Bequest of IRD?

Instruction in Will or Trust :

“If I make a charitable bequest, pay it first out of IRD, if any” (oversimplified) ..

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FREE ARTICLE:

Google search: **SSRN Hoyt IRD**

*Income Tax Deductions
for Charitable Bequests of IRD*

.pdf file; easy download; 11 page article; 32 footnotes

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CHARITABLE PLANNING WITH RETIREMENT ACCOUNTS: STRATEGIES, TRAPS AND SOLUTIONS

“Charitable IRA Rollover”

- IRAs in Second Marriages – CRT Solution
- IRD in Taxable Estates
 - Double taxation – estate tax & income tax
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■ **Income-Based Charitable Bequests**

(for estates not subject to estate tax – under \$5.5 million)

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Income-Based Charitable Bequests

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Income-Based Charitable Bequests

BACKGROUND:

- Today the typical charitable bequest is a distribution from the estate's corpus.
- For example, "pay \$50,000 to the Charity, and the remainder of my estate to my children."
- Charitable bequests are usually viewed as providing estate tax savings but no income tax savings.

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Income-Based Charitable Bequests

EXAMPLE

"Pay \$50,000 to the Charity, and the remainder of my estate to my children."

- \$1,000,000 million estate

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Income-Based Charitable Bequests

EXAMPLE

“Pay \$50,000 to the Charity, and the remainder of my estate to my children.”

- \$1,000,000 million estate
- \$ 60,000 taxable income during administration of estate (*\$20,000 received from an IRA (“TRD”) and \$40,000 of taxable interest and dividends*)
- \$1,060,000 – Total cash

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Income-Based Charitable Bequests

Traditional Charitable Bequest

Distributions:

- Charity	\$ 50,000
- Child	<u>1,010,000</u>
— Total	\$ 1,060,000

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Income-Based Charitable Bequests

Traditional Charitable Bequest

Distributions:

- Charity	\$ 50,000
- Child	<u>1,010,000</u>
-- Total	\$ 1,060,000

Income taxed to:

- Charity	\$ -0-
- Child	\$ 60,000

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Income-Based Charitable Bequests

What is an income-based charitable bequest?

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Income-Based Charitable Bequests

What is an income-based charitable bequest?

- An income-based charitable bequest is a charitable bequest where the source of the payment is the estate's [trust's] taxable income, rather than a distribution of corpus.
- A wholesale change from the traditional way of drafting a charitable bequest.

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Income-Based Charitable Bequests

EXAMPLE:

- [No charitable bequest from corpus]
- “All of this estate's [trust's] income (including capital gains and IRD) shall be distributed to the Charity. If the cumulative amount of income of this estate [trust] exceeds \$50,000, then Charity shall receive only a cumulative amount of \$50,000 and all excess income shall be retained or distributed to my beneficiaries at the discretion of the executor [trustee].”

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Income-Based Charitable Bequests

- The charity will receive \$50,000 under either scenario, assuming that there is at least \$50,000 of income.
- But with an income-based charitable bequest, the estate, trust and the children will not incur an income tax liability on \$50,000 of income.
- Simplest case: generate a charitable income tax deduction to offset the income generated during the administration of an estate (or of a trust whose purpose is akin to settling a probate estate).

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Income-Based Charitable Bequests

Traditional Charitable Bequest

Distributions:

- Charity	\$ 50,000
- Child	<u>1,010,000</u>
— Total	\$ 1,060,000

Income taxed to:

- Charity	\$ -0-
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Income-Based Charitable Bequests

	<u>Traditional Charitable Bequest</u>	<u>Income-based Charitable Bequest</u>
<i>Distributions:</i>		
- Charity	\$ 50,000	
- Child	<u>1,010,000</u>	
— Total	\$ 1,060,000	
<i>Income taxed to:</i>		
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Income-Based Charitable Bequests

	<u>Traditional Charitable Bequest</u>	<u>Income-based Charitable Bequest</u>
<i>Distributions:</i>		
- Charity	\$ 50,000	
- Child	<u>1,010,000</u>	
— Total	\$ 1,060,000	
<i>Income taxed to:</i>		
– Charity	\$ -0-	\$ 50,000
– Child	\$ 60,000	\$ 10,000

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Income-Based Charitable Bequests

	Traditional <u>Charitable Bequest</u>	Income-based <u>Charitable Bequest</u>
<i>Distributions:</i>		
- Charity	\$ 50,000	\$ 50,000
- Child	<u>1,010,000</u>	<u>1,010,000</u>
-- Total	\$ 1,060,000	\$ 1,060,000
<i>Income taxed to:</i>		
- Charity	\$ -0-	\$ 50,000
- Child	\$ 60,000	\$ 10,000

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Income-Based Charitable Bequests

Why focus on non-taxable estates?

-- Why not taxable estates?

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Income-Based Charitable Bequests

Why focus on non-taxable estates?

-- Why not taxable estates?

- Taxable estate: trade-off of tax-savings from charitable deduction between estate tax (40%) and income tax (perhaps at beneficiary lower rate)
- With a non-taxable estate there is no estate tax. So the tax planning is to take steps that reduce the only tax that a non-taxable estate and its beneficiaries will incur: the income tax

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Income-Based Charitable Bequests

Bottom line:

- For a non-taxable estate, a very large income-based charitable bequest offers the potential to eliminate the income tax liability for all income earned during the administration of an estate
- Would be helpful to have guidance with PLR, revenue ruling, court decision, etc

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ARTICLES

#1 – CRT for Second Marriages

Google search **SSRN Hoyt Rollover** (FREE ARTICLE)

*Retirement Assets to a Surviving Spouse –
Rollovers and Portability are Your First Choice*

#2 - Charitable Bequests of IRD

Google search: **SSRN Hoyt IRD** (FREE ARTICLE)

*Income Tax Deductions for Charitable Bequests of IRD
.pdf file; easy download; 11 page article; 32 footnotes*

#3 - Income-Based Charitable Bequests

PROBATE & PROPERTY

(September/October, 2017)

Tax Savings With Income-Based Charitable Bequests

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Q&A

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Additional Questions

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**CHARITABLE PLANNING WITH
RETIREMENT ACCOUNTS:
STRATEGIES, TRAPS AND SOLUTIONS**

Thank you!

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