the Legacy IRA
opportunities and uncertainties

prepared for
the Planned Giving Roundtable
of Southern Arizona

01 March 2023

a brief history of section 408(d)(8)

- **extensive lobbying effort by NACGP, ACGA**
- **enacted in 2006 as temporary measure**
- **extended multiple times for one or two years, sometimes retroactively**
- **made permanent in 2015**
- **lobbying for "legacy" IRA continues**

requirements, limitations, opportunities

- direct distribution from IRA
  except SIMPLE, SEP
- to 170(b)(1)(A) public charity
  supporting orgs, donor advised funds excluded
- participant aged 70-1/2 or older
- 100k per year limit

- excluded from income
  except to extent of contributions in years ending after age 70-1/2 for which deductions allowed (added in 2019)

- but counts toward minimum required distribution after required beginning date, now age 73

a brief history of the "legacy" IRA

- concept first floated in 2009

- extend QCDs to life income gifts
  - minimum age 59-1/2
  - maximum contribution 400k per year
  - entire payout taxed as ordinary income
  - not assignable

- introduced multiple times over several sessions
  - always subject to four-year limited run
  - more recent iterations minimum age 65

- but never reported out of committee until incorporated into Secure 2.0

section 307 as enacted

- scaled back considerably from original concept
   - minimum age 70-1/2
   - 50k limit
   - "one and done"
- allows QCD to "split-interest entity"
   - defn. CRAT, CRUT, immediate CGA min. five pct
   - funded entirely from QCDs
- but only if
   - payable only to participant and/or spouse
   - not assignable
- entire payout taxed as ordinary income
- both 100k and 50k limitations subject to adjustment for inflation

requirements, limitations, uncertainties

- election "to treat [distribution] as meeting requirement" of 408(d)(8)(B)(i)
   - election mechanism not specified
   - implies 50k counts against 100k limit
- but does requirement of (B)(i) still apply?
   i.e., must remainder charity or gift annuity issuer be a 170(b)(1)(A) public charity?
- "nonassignable" even to trust remainderman or gift annuity issuer?
   - cf. May 2016 T&E article by Conrad Teitell

https://www.wealthmanagement.com/retirement-planning/house-bill-authorize-charitable-life-income-ira-rollovers

requirements, uncertainties, opportunities

- five pct minimum payout expressly applies only to gift annuity
  - depending on age of participant, per ACGA tables, could include younger spouse as young as age 63
- does not expressly preclude net income limitation in unitrust
  - nor qualified contingency, term of years
  - but expense of setting up and operating CRT likely prohibitive
- internal controls for gift annuity issuer
  - deviation from ACGA recommended rates?
  - express nonassignability language
  - 1099R reporting entire payout ordinary income

FAQs

- life income vehicle funded by QCDs only
  - cannot combine w/ other contributions
  - cannot add to existing vehicle
  - cannot later add to QCD funded vehicle
- participant and/or spouse only
  - separate contributions up to 50k each
  - no contingent beneficiary
  - term of years CRT can be only shorter of
- election to treat "as meeting requirement"
  - entire amount excluded from income
  - entire amount counts toward MRD

a foot in the door?

- most recent iteration prior to inclusion in appropriations measure was S. 243
  - would have allowed QCDs up to 400k per year into "split-interest entity" at age 65
  - up to 130k per year outright at age 70-1/2
  - gift annuity to commence w/in year, but no minimum payout
  - no inflation adjustment

- per JCT, revenue estimates unacceptable
  - up to 400k excluded now
  - spread over twenty-plus years
  - half outside budget window

implementation problems and solutions

- remainder trust rarely feasible at 50k or 100k

- but large potential market for gift annuities
  - particularly among nonitemizers
  - effectively an above-the-line deduction
  - tax incidence of IRA payout shifted back

- institutional capacity, outsourcing

questions, comments

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