Selected Strategies for Retired Couples to Stretch their Retirement Savings

Considerations for maintaining assets looking to income tax challenges for the surviving spouse.

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This article is about retirement planning for already retired married couples. Are there tax and other strategies that an already retired couple can adopt, today, to place themselves and their children in the best position possible to maximize the after-tax benefits they receive from their retirement savings, including Social Security, over their lifetimes?

One of the most important tax principles to recognize in this analysis is the fact that, except at the 37% tax bracket, the current progressive federal income tax brackets for single individuals are now reached twice as quickly as those of married couples. Thus, when it comes to retirement planning for already retired couples, there is a definite "single filer penalty" that must be considered in planning for the surviving spouse.

Concerning the couple's children, another important tax principle is the fact that, under the SECURE Act passed in late 2019, it is no longer possible to defer IRA and 401k fund balances over the lifetime of the couple's children after the couple passes. Instead, the balance in the couple's IRAs and 401k plan accounts must be paid out to the children over the 10 years after the couple passes, years which are likely to be the children's peak earning years.

Based on the foregoing tax principles and considerations, logic would dictate that already retired married couples consider taking voluntary withdrawals from their IRAs and 401k plan accounts which are earlier and larger than what the law requires. Similarly, if the retired couple also owns significant highly appreciated taxable account assets, it will be worthwhile for them to consider taking steps, while they are married, to reduce potential capital gains taxes to the surviving spouse, especially in light of the above-noted single filer penalty. Finally, the couple should explore tax strategies for addressing the portion of their taxable IRA and 401k accounts which remain later in life and upon their passing.

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Minimizing Income Taxes on IRA and 401k Accounts

Under "SECURE Act 2.0," passed in late 2022, it is now possible for an individual who is not already receiving required minimum distributions from IRAs or 401k plans to defer beginning the receipt of the same until the individual attains age 73 (and in the future, age 75). The important retirement planning question for already retired couples to ask themselves is whether it makes financial sense for them to take maximum advantage of this new extended deferral period. In order to answer this question, it is necessary to

explore how the federal income tax system works for a married couple filing jointly versus a surviving spouse filing as a single taxpayer.

Set forth in Exhibit 1 is a table of the 2023 federal tax brackets and rates for married couples filing jointly and for single individuals. As the table illustrates, in recent years the federal income tax system has evolved to the point where, except at the very highest tax brackets, widowed spouses reach the same federal income tax brackets at half the level of income that married couples do. Their standard deduction ($13,850) is also half the level of a married couple ($27,700).

Bearing in mind that it is not at all unusual today for one spouse to survive the other by 10 years or more, in retirement planning for already retired married couples the first goal should be to minimize the potential effects of this "single filer penalty," thereby maximizing the after-tax retirement funds for the surviving spouse.

Assume, for example, that a married couple is making $100,000 a year in retirement (excluding, at this point, any discussion of Social Security benefits and the taxation of the same). After factoring in the couple's $27,700 standard deduction (in 2023), their federal income tax liability assuming 2023 tax rates and brackets would be $9,346. If either spouse was deceased, however, the surviving spouse's federal income tax liability, on the same amount of gross income, would be $14,260, or 52.6% more than when the couple was still married. Given the significant unfavorable tax position of a surviving spouse, it begs the question what proactive steps can be taken by a retired married couple to ameliorate the situation.

Now assume a retired married couple with no other income takes a $100,000 voluntary withdrawal from a regular IRA and converts the after-tax amount, or $90,654, into a Roth IRA. Also for simplicity purposes, assume the Roth grows by 10% the following year, or to $99,719, and that the husband dies during the year. Ignoring potential penalties for a Roth withdrawal shortly after the conversion, the wife would net $99,719 if she withdrew the entire Roth amount the following year.[1]

Had the Roth conversion not taken place while the couple was still married, however, and the wife made a withdrawal of the $100,000 plus 10% growth, or $110,000, from the taxable IRA account the year after her husband died, her federal income taxes would be $16,475, or 76.3% more than the federal income taxes which would have been paid had the withdrawal/Roth conversion been made while the couple was still married, and the surviving spouse would net $93,525, for a net after-tax reduction of $6,194.

Again assuming the Roth conversion had not taken place while the couple was married, now further assume the wife made a withdrawal of $110,000 plus another year of 10% growth from the taxable IRA account two years later, or $121,000. The wife's federal income tax liability would be $19,115, or now more than double what the couple would have paid in federal income taxes had the Roth conversion been made while the husband and wife were both alive, and the wife would net $101,885. Had the Roth conversion during marriage been made, the wife would have netted $109,691, for a difference of $7,806.

Multiply this growing annual disparity by, say, 10 years' worth of these

EXHIBIT 1
2023 Federal Tax Brackets and Rates

Taxable Income	Taxes owed
Married Filing Jointly	
$22,000 or less	10% of the taxable income
$22,001 to $89,450	$2,200 plus 12% of amount over $22,000
$89,451 to $190,750	$10,294 plus 22% of amount over $89,450
$190,751 to $364,200	$32,580 plus 24% of amount over $190,750
$364,201 to $462,500	$74,208 plus 32% of amount over $364,200
$462,501 to $693,750	$105,664 plus 35% of amount over $462,500
$693,751 or more	$186,601.50 plus 37% of amount over $693,750
Single Individuals	
$11,000 or less	10% of the taxable income
$11,001 to $44,725	$1,100 plus 12% of amount over $11,000
$44,726 to $95,375	$5,147 plus 22% of amount over $44,725
$95,376 to $182,100	$16,290 plus 24% of amount over $95,375
$182,101 to $231,250	$37,104 plus 32% of amount over $182,100
$231,251 to $578,125	$52,832 plus 35% of amount over $231,250
$578,126 or more	$174,238.25 plus 37% of amount over $578,125

[1] The numbers in this discussion would be higher if the couple paid the "Roth conversion tax" out of other savings.

annual $100,000 voluntary IRA withdrawals/Roth conversions during the couple's lifetime, including after their required beginning date, while also assuming the surviving spouse lives 10 years after the first spouse to die passes, and the single filer income tax penalty for deferring withdrawals from IRAs and 401k plans for as long as possible becomes self-evident.

Illustrated another way, assume that retired couple's annual federal gross income is $100,000, or $72,300 in taxable income after the couple's $27,700 standard deduction. This places them in the 12% marginal federal income tax bracket. Assuming this gross income amount does not change after one of the spouses passes, the survivor will be in the 22% marginal federal income tax bracket on the survivor's $86,150 in taxable income, after the survivor's 50% lower $13,850 standard deduction.

Now assume this same couple voluntarily withdraws $17,150 from their IRAs during their joint lifetime, making their total taxable income $89,450. They would still be taxed in only the 12% marginal federal income tax bracket on this additional income. However, if the couple waited until after the first spouse died for the surviving spouse to voluntarily withdraw the same amount, the survivor's taxable income would be $103,300 (because of his or her lower standard deduction), which would place the surviving spouse in the 24% marginal federal income tax bracket for a single filer, or an increase of 100% in marginal federal income tax bracket.

An analogous situation arises when both spouses die, this time as a direct consequence of the SECURE Act. Assume, for example, that the couple's gross income in retirement is the same $100,000, or $72,300 after their standard deduction. Assume also that when they both pass the couple's children are all married, and that their spouses and the children are each in their peak earning years, making a combined $250,000 per couple, or $222,300 after their standard deductions. The married couple's children will be in the 24% marginal income tax bracket, again a 100% increase over the marginal income tax bracket of the married couple while they were both living. As a result of the SECURE Act the children will now be required to add the balance in their parents' IRAs when they both pass to the children's existing incomes, over the 10 years following their parents' passing, which will most likely raise their marginal income tax brackets even further.

A retired married couple can stretch their own retirement savings, and also eventually benefit their children, by paying attention to this "tax brackets factor" in their IRA and/or 401k plan distribution planning, both before and after their required beginning date.

Each situation of course will need to be independently analyzed, but in general the point is made that a retired married couple can stretch their own retirement savings, and also eventually benefit their children, by paying attention to this "tax brackets factor" in their IRA and/or 401k plan distribution planning, both before and after their required beginning date. Only when the retired couple's income is very low and they are under age 73, in which case, and as discussed later in this article, voluntary IRA or 401k withdrawals can cause a significant portion of the couple's Social Security receipts to be taxed when it would otherwise not be, or when the disparity in marginal federal income tax rates for married couples versus surviving spouses, as well as for the couple's children, in not as great, and where a significant increase in Medicare premiums may result, would it not normally make sense for a retired married couple to consider taking significant voluntarily IRA and/or 401k plan withdrawals, both before and after their required beginning date. The withdrawn funds should then be repositioned into a tax-free Roth IRA or, as a potential option, into income tax-free life insurance.[2] It only makes financial sense to take voluntary withdrawals in a much lower federal income tax environment and then reposition the after-tax amount into an income tax-free or low tax vehicle of some sort.

Restating the conclusions thus far, even though SECURE Act 2.0 may have changed the IRA or 401k account owner's required beginning date to age 73 (and, in the future, to age 75), waiting until these ages to begin taking voluntary withdrawals from the IRA or 401k plan will likely cause more income to be subject to income tax for the surviving spouse, later, and therefore be subject to the single filer penalty of as much as 100%. It can also cause significantly higher income taxes to the couple's children after both spouses pass, as the children will be required to include the balance of the IRA or 401k plan account in their taxable income over the following 10 years, years in which the children are likely to be in their peak income tax brackets. Logic would dictate that, except in situations where voluntary withdrawals may result in an otherwise unnecessary and significant tax on Social Security benefits, or to the extent the voluntary withdrawals could cause the couple significantly higher Medicare premiums,[3] taking voluntary withdrawals from IRAs and 401k plan accounts will likely have the eventual

result of significantly stretching the couple's after-tax 401k plan and/or IRA retirement savings, during their combined lifetimes, as well as the eventual effect of reducing income taxes for the couple's children on the balance in these accounts when the second spouse passes. The optimum amount of the voluntary withdrawals will again depend on all the tax facts and circumstances, both for the couple combined and as projected for the surviving spouse and children.

Finally, notice that, to the extent the retired couple is able to lower their federal income tax liability during their lifetime, obviously there will be that much more in the way of assets remaining for the children, when both spouses pass.

Minimizing Capital Gains Taxes on Taxable Retirement Accounts

Unless the sale of significantly appreciated assets is recommended to offset otherwise nondeductible losses or for other non-tax reasons, for retired married couples, at least, liquidating significantly appreciated assets to pay retirement expenses should be low on the priority table. The reason for this is that appreciated assets held until death receive a new income tax basis in the hands of the ultimate recipient, equal to the fair market value of the assets at the death of the owner, thus eliminating or at least reducing income taxes on the "pre-death" appreciation should a surviving spouse or other beneficiary elect to later sell the same.

If funds over and above the surviving spouse's proceeds from the sale of stepped-up income tax basis assets and other income, including Social Security and required minimum distributions from his or her IRA, are needed for retirement living expenses, the preference will often be to take distributions from a (hopefully now significant) nontaxable Roth IRA prior to taking distributions from a taxable IRA. The reason for this is that voluntary taxable distributions from a regular IRA will be subject to the single filer penalty discussed above. Unless the surviving spouse is relatively certain his or her "single filer" tax amount will be lower than the income tax which the couple's children are likely to pay on the balance in the IRA or 401k plan over the 10 years after the survivor's passing (i.e., under the SECURE Act), it is normally best not to pay this penalty voluntarily. If the surviving spouse's income tax rate on the regular IRA or 401k plan receipts would likely be less than the income tax rate the children will eventually pay, however, then obviously the above general principle of taxing these receipts at the lowest possible income tax rate will apply.

There are many approaches to achieving income tax basis step-up at the passing of the first spouse to die, the choice of which depends upon all the circumstances. In community property states such as Texas, California and Wisconsin, for example, all community property owned by the husband and wife, regardless of how titled, other than so-called "income in respect of a decedent" (IRD, which is basically income an individual is entitled to receive at the time of his or her death, but which is not actually received, such as IRA proceeds, annuity income, deferred compensation, or sales proceeds), receives a new income tax basis at the death of the first spouse to die, equal to the fair market value of the property at that time. What is more, most community property states also allow a married couple to elect to treat non-IRD assets which were not previously classified as community property, as community property going forward, thus qualifying any such "elected" appreciated assets for full income tax basis step-up at the death of the first spouse to die.

In other states, appreciated assets which are jointly owned by a husband and wife at the time of the first spouse's passing receive only a 50% income tax basis step-up at the first spouse's death, and property owned by a surviving spouse at the time of the first spouse's death receives no income tax basis step-up at that time. It is for these two reasons that married couples living in non-community property states need to plan with their advisors to achieve the maximum income tax basis step-up possible on their taxable accounts at the death of the first spouse. Included below are some planning thoughts and options designed to achieve this end.

Rather than retain all assets in joint names, the married couple could opt to transfer more of the highly appreciated assets to the name of the spouse who is more likely to pass first. Considerations such as age, male versus female, and overall health situations, are obviously relevant here. In the approximately 20 so-called "tenants by the entirety" states, where property owned jointly by a husband and wife is largely protected from lawsuits and creditors of either spouse individually, this element needs to be considered before indiscriminately severing the tenants by the entirety property and transferring the appreciated assets to either spouse.[4] Another obvious disadvantage to this plan is that the spouse who is more likely to die first may not end up doing so.

In non-community property situations where one spouse is terminally ill, it will normally be advisable to transfer all of the appreciated assets into that spouse's name. However, Congress imposes a one-year waiting period in such situations, meaning that if one spouse transfers an interest in property to the other spouse, including the donor spouse's one-half interest in jointly-owned property, there will be no income tax basis step-up on the

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2 This latter concept is explored further in the author's book, *Estate Planning for the SECURE Act: Strategies for Minimizing Taxes on IRAs and 401Ks.*

3 These situations are discussed later in this article.

4 Some tenancy by the entirety states, such as Missouri, allow tenancy by the entirety property to be severed into two shares of a revocable trust, and still maintain its tenancy by the entirety protections.

Based on the above-discussed principles, however, it is clear that the analysis is not always this simple, at least in the situation of retired married couples. Pushing the start of Social Security benefits off until age 70, so that there will be a larger projected aggregate payout to the couple over time, also means that, on a projected basis, a greater portion of the couple's Social Security benefits will be payable after the first spouse dies, and will therefore be subject to the single filer penalty in the hands of the surviving spouse. Bunching more Social Security benefits into the years after both spouses attain age 70 can also increase the tax bracket of the couple, including the surviving spouse. Deferring Social Security benefits likewise eliminates the ability of the couple to invest the otherwise larger pre-age 70 payments into an investment which will grow with better tax characteristics, i.e., capital gain and dividend tax rates, and with the potential for income tax basis step-up at the death of the first spouse to die.

Finally, solvency issues with Social Security unfortunately cannot be ignored today. In years past Congress has chosen to change the way Social Security payments grow with inflation, and it has increasingly subjected Social Security payments to income tax. It stands to reason that, in the not-too-distant future, additional changes to Social Security payments will be made which will not likely be to a couple's advantage. The old proverb, "a bird in hand is worth two in the bush," may be appropriate here.

Maximizing a retired couple's after-tax Social Security benefits also requires recognition of the couple's other sources of income, including both taxable and tax-deferred accounts, especially prior to the new age 73 (and eventually age 75) required beginning date for receiving IRA and 401k plan receipts. This is because, at very low levels of outside income (whether taxable or not), a couple's Social Security benefits start becoming taxable, with up to 85% of the receipts potentially being included in the couple's taxable income. There are several different fact patterns which can come into play here, assuming the couple has accumulated a significant IRA balance.

In the simplest of situations, a retired married couple, age 62, elects to take a much smaller amount of Social Security, early. In this situation, in all likelihood, the couple will need more funds to live off of, so utilizing other sources of income will most likely come out of necessity, as opposed to by design. Further, the tax on 85% of a much lower Social Security benefit amount will likely have less than a significant impact, in the long run.

In the next situation is a 66-year-old retired couple electing to take full Social Security at this point. The couple has little or no other outside income (other than the potential to take voluntary IRA withdrawals), and is able to live off of its Social Security. Under these facts it would at first blush appear to make sense for the couple to defer taking distributions from their IRAs until age 73. By doing so the couple will not only lock in the best situation possible with respect to the Social Security benefits they are receiving, earlier rather than later, but perhaps more importantly they will also avoid income taxes on seven years' worth of Social Security benefits.

The above-described Social Security benefit planning will mean more IRA benefits could end up being paid to the surviving spouse, however, subject to the single filer penalty previously discussed at some length. This higher potential income tax on the larger annual IRA receipts in the long-term will therefore need to be balanced against the zero or low-income tax on the total Social Security benefits in the short-term. It should also be remembered that, once the couple attains age 73, when required minimum distributions will be forced upon them and their Social Security will become taxable regardless, they can then begin a plan of taking larger than required withdrawals from their IRAs prior to the passing of the first spouse to die, and still benefit (albeit to a lesser extent) under the analysis included earlier in this article.

Unless the sale of significantly appreciated assets is recommended to offset otherwise nondeductible losses or for other non-tax reasons, for retired married couples, at least, liquidating significantly appreciated assets to pay retirement expenses should be low on the priority table.

What about the situation of a 66-year old couple that does have significant annual income other than IRA receipts, including nontaxable income — enough to cause the maximum 85% of the couple Social Security receipts to be included in its taxable income each year? Would this couple benefit by taking voluntary early IRA withdrawals before age 73? The answer should be yes, based upon the previous analysis. The only caveat to this answer is that, at higher levels of income, the couple's Medicare premiums will be adversely impacted. Higher voluntary early withdrawals now will mean lower levels of income later, however, which could

[5] Arguably the surviving spouse may be an income beneficiary of the trust, under a theory that the Internal Revenue Code's "one year rule" does not apply to post-death income.

[6] See the below discussion for the additional asset protection benefits of this trust.

end up balancing out the Medicare premium situation.

Lastly, what about the situation of a couple age 73, who is now obligated to begin receiving required minimum distributions from its IRAs? Should this couple consider taking additional voluntary withdrawals from their IRAs, and not worry about its effect on the taxability of their Social Security benefits? The answer again should be yes, based upon the above analysis.

It can be argued that the single filer penalty imposed on the surviving spouse will be offset by the fact that the surviving spouse's Social Security income may be a third less than what it was while his or her spouse was alive, and so the surviving spouse's income taxes will be reduced by the tax on 85% of this reduction. Although a true statement, this is not because of some special tax treatment for a surviving spouse, but rather because the surviving spouse is receiving less income. The reduction in Social Security benefits to the surviving spouse only adds to the single filer penalty the surviving spouse is forced to incur on his or her other taxable income, in other words, and is therefore another reason for working hard to minimize the single filer penalty, not the opposite.

The same principle applies if the couple has elected a joint and survivor pension benefit, which pays the surviving spouse only 50% of the joint benefit. The reduction in the pension benefits payable to the surviving spouse is just another reason to minimize the single filer penalty on the surviving spouse's other taxable income.

Protecting Retirement Savings from Potential Creditors

In addition to the income tax saving benefits outlined thus far, there may also be a significant asset protection benefit associated with taking voluntary withdrawals from regular IRAs and converting the same to Roth IRAs. Although in many states *both* regular IRAs and Roth IRAs are fully protected from creditor claims outside of bankruptcy, the conversion of voluntary withdrawals from a regular IRA to a Roth IRA may provide additional protection from lawsuits. The reason for this can best be illustrated by the following example.

As a direct consequence of today's higher interest rates, it is now possible for the account owner to partner with charity to offset these harmful post-death aspects of the SECURE Act.

Assume a married couple does none of the proactive planning with their IRAs or 401k accounts discussed earlier, and therefore only takes required minimum distributions from their regular IRAs, beginning when they attain age 73. Assume also that their option would have been to make annual voluntary $100,000 Roth conversions of their regular IRAs, beginning when they retired, at age 62.

Assuming the couple resides in a state which fully insulates both regular IRAs and Roth IRAs from creditors outside of bankruptcy, if either or both of the spouses is later successfully sued after they attain age 73, the amounts which could have accumulated inside the Roth IRA up until that point, including any growth in value of the same, would have been fully protected, because, unlike a regular IRA, the Roth IRA will not require mandatory annual payments during the lifetimes of the owner and the owner's spouse. Similar asset protection results would have existed had the couple chosen to convert all or a portion of the voluntary early IRA withdrawals into income tax free life insurance. All or a portion of the cash value of the life insurance policy would be protected from the couple's creditors, and as long as the policy proceeds are paid to a trust for the benefit of the surviving spouse, the proceeds too would have been protected.[7]

To the extent neither of these proactive measures are taken by the couple, however, larger annual required minimum distributions from the couple's regular IRAs must begin at age 73. If either spouse is successfully sued, these larger, mandatory annual payments will be fully or partially subject to the claims of the couple's creditors. Proactive planning for the primary purpose of saving the couple income taxes, on the other hand, would have provided the couple additional asset protection benefits for their accumulated retirement savings by protecting the Roth or life insurance funds from a potential future creditor attack.

Another retirement savings asset protection option which can at least protect the surviving spouse would be to direct IRAs, Roth IRAs, 401k accounts and other taxable retirement savings accounts which remain at the passing of the first spouse to an asset-protected "spendthrift" trust for the surviving spouse's benefit.[8] In the case of IRAs, Roth IRAs, and 401k accounts, however, paying the same to an asset protection trust for the surviving spouse will shorten the payout period to a flat 10 years after the first spouse's death, and in the case of regular IRAs and 401k accounts will not allow the beginning of required minimum distributions to be deferred until the surviving spouse attains age 73. At some point after the couple attains age 73, however, the income tax disadvantages of paying an IRA, Roth IRA, or 401k plan account to an asset-protected trust for a surviving spouse

begin to lesson considerably, and can become a relative non-factor.

If a trust is to be designated as recipient of regular IRAs, 401k accounts, and/or taxable accounts of the first spouse to die, the trust should be prepared by the attorney in a fashion which will avoid the compressed federal income tax brackets imposed on trusts (which compression is even more severe than the compressed income tax brackets imposed on single individuals), while still preserving the trust's asset protection features.[9]

Finally, note that if it is unlikely that the surviving spouse will be sued or will remarry, e.g., because he or she is elderly and does not drive, the need for an asset-protected vehicle to house the surviving spouse's retirement savings is significantly reduced.

Tax Leveraging Retirement Savings for Long-Term Care Needs

It will be an unusual circumstance when a married couple will be in a position to convert all of their regular IRAs and/or 401k accounts to Roth IRAs or to tax-free life insurance during their joint lifetime. There will thus be a portion of these accounts which will remain. This is the portion which can be best utilized if long-term custodial care costs for the couple or the surviving spouse should arise. Subject to the annual 7.5% floor for the deduction for medical expenses and the impact of the standard deduction, either spouse's long-term custodial care costs can be paid using taxable IRA and/or 401k plan proceeds. In the case of costs incurred by a surviving spouse, this will also help mitigate the single filer penalty by reducing the surviving spouse's taxable income.

For the reasons already outlined, taxable IRAs and 401k accounts should usually be utilized by the couple, at least while they are married, before generating unnecessary capital gains taxes on taxable investments, taxable gains which would have been wiped out by the step-up in income tax basis at the owner's passing. This same general principle should also apply after the first spouse dies, provided the surviving spouse is in a lower income tax bracket then his or her children are likely to be, or if the surviving spouse will use the proceeds of these accounts to pay tax deductible long-term care expenses. If only appreciated taxable investments remain in the surviving spouse's estate, these investments can then be liquidated by the surviving spouse, essentially income tax free, if the proceeds are used to pay tax-deductible long-term care expenses.

As potential tax-deductible long-term care costs are speculative, however, the planning outlined here should certainly not be a married couple's sole plan for minimizing income taxes on their IRAs and 401k plan accounts. Nevertheless, this planning may end up being a convenient way to "soak up" some of the balance of the couple's regular IRAs and 401k accounts which they were not able to convert to Roth IRAs or other lower taxable accounts during their lifetime.

Partnering with Charity to Minimize the Adverse Effects of the SECURE Act

As described throughout this article, one of the most problematic aspects of the SECURE Act applies to an IRA or 401k account owner's children after the account owner's death. The new mandatory 10-year period for receiving distributions after the IRA or 401k plan account owner's death just happens to coincide with the likely peak earning years of the children and their spouses, say ages 55-65. Thus, the IRA and/or 401k distributions will likely be taxed in the highest income tax bracket that they ever could have been taxed. As a direct consequence of today's higher interest rates, however, and specifically the Section 7520 rate (which in April of 2023 was at 5%, compared with 0.4% in November of 2020), it is now possible for the account owner to partner with charity to offset these harmful post-death aspects of the SECURE Act. What is more, new "SECURE Act 2.0," passed in late 2022, may actually support this partnering.

Back in the summer and fall of 2020, when the Section 7520 rate was at its lowest point, a "SECURE Act strategy" of paying the balance of an account owner's IRA and/or 401k plan benefits to a charitable remainder trust when the account owner passed resulted in no net benefit to the couple's children. For example, the account owner could have structured the charitable remainder trust to pay a 7.1% annuity to the children, for 13 years, with the balance of the trust passing to charity at that point, and the trust would have satisfied the requirement that charity actuarially receive at least a 10% of the trust's initial corpus. However, the children would have received only 92.3% of the trust corpus, on a nominal basis, and most of the income from the IRA and/or 401k plan benefits would have still been paid to the children during their likely peak earning years.

Today, however, with a Section 7520 rate of 5% (as of April, 2023), at a permissible 7.2% annuity rate the children would receive 144% of the trust corpus, on a nominal basis, and half of that amount will be received over years 11-20, or in years when the children are more likely to be retired. What is more, with SECURE Act 2.0's new rule that, in the future, the children need not begin taking their *own* IRA, etc. distributions until they attain age 75, these second 10 years can turn out to be the lowest tax bracket years of the children's lifetime.

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7 Note that for larger cash value and death benefit policies it is recommended that an irrevocable life insurance trust be utilized to completely exempt both the cash value and policy proceeds from creditors, as well as from estate taxes.

8 This technique as applied to taxable accounts is discussed above.

9 These concepts are discussed in the author's book, *Estate Planning for the SECURE Act: Strategies for Minimizing Income Taxes on IRAs and 401Ks.*

Assume, for example, that the IRA or 401k plan account owner passes when the couple's youngest child is age 55, and that this child plans to continue working until age 65. In this example, and utilizing the April 2023 Section 7520 rate of 5%, the child's 7.2% maximum annual annuity amount from the charitable remainder trust would be spread over 20 years. Thus, not only would the annuity payments during the child's working years be dramatically reduced from what they would have been under the IRA or 401k plan had these payments been received directly by the child rather than through the charitable remainder trust vehicle, the payments which are made during the child's retirement years of ages 65-75 will likely be taxed at a much lower rate as a result of SECURE Act 2.0's extending the child's mandatory beginning date for receiving distributions from his or her own IRA or 401k to age 75. The child will likely be retired during this 10-year period, but not yet required to take distributions from his or her own IRA and/or 401k plan.

Even though the child will be receiving 144% of the initial value of his or her IRA and/or 401k plan account on a nominal basis under this 20-year payout plan, the child will only be receiving 90% of the account on a present value basis. The child will receive less taxable distributions during his or her peak earning years, i.e., ages 55-65, than he or she would have been forced to receive without the intervention of the charitable remainder trust vehicle. In their place, the child will now be receiving half of the distributions from the charitable remainder trust during ages 65-75, ages in which the child is likely to be retired. Further, because of SECURE Act 2.0, the child will not be required to begin taking withdrawals from his or her own IRA and/or 401k plan until age 75. The child is therefore likely to be in his or her lowest tax bracket years during this age 65-75 period, and these years therefore become an optimum time for the child to receive the balance, or 50%, of the taxable payments from the charitable remainder trust.

The charitable arrangement can be refined to further reduce the income tax consequences to the child. Except in the case of employer stock owned in a 401k plan account, when distributions are made directly to the beneficiary from a taxable IRA or 401k account, all distributions are subject to federal income tax without any special qualified dividend, long-term capital gain, or tax-exempt treatment. Pursuant to Section 664(b) of the Internal Revenue Code and Treas. Reg. 1.664-1(d)(1), on the other hand, once an amount equal to the initial taxable IRA or 401k lump sum distribution has been paid out to the beneficiary of a charitable remainder trust, i.e., via the annual annuity payments, the future annuity distributions may become eligible for the same special income tax treatment qualified dividends and long-term capital gains receive for individual investments in taxable accounts, depending upon how the trustee invests the charitable trust's assets. Furthermore, once the annuity distributions have exhausted all forms of federal gross income (including capital gains), it is even possible for the distributions to be federally tax-exempt, assuming the charitable trust invests in federally tax-exempt securities. Again, compare this favorable income tax treatment associated with distributions from charitable remainder trusts to the tax treatment afforded distributions from taxable IRAs and 401k plans by the Internal Revenue Code, especially distributions relating to post-death earnings and growth inside the taxable IRA or 401k plan account versus inside the charitable remainder trust.

Although the exact application of the "after-tax math" will obviously vary from situation to situation, as a direct consequence of rising interest rates and SECURE Act 2.0's future extension of the children's RMD beginning date to age 75, as well as the manner in which distributions from charitable remainder trusts are taxed for federal income tax purposes versus the manner in which distributions directly from taxable IRAs and 401k plans are taxed, it becomes evident that, by partnering with charity, the net, after-tax amount which the children will eventually receive from the decedent's taxable IRAs and/or 401k accounts can now oftentimes better approximate, and in some situations even surpass, the after-tax amount the children would have received pre-SECURE Act. Charity obviously also benefits under this scenario, and if the account owner is in a taxable estate situation, the children will also benefit by the available estate tax charitable deduction for the charity's actuarial interest in the charitable remainder trust. ■