



BNY MELLON
WEALTH MANAGEMENT

Heckerling Update 2020

Jeremiah W. Doyle IV, Esq
BNY Mellon Wealth Management



BNY MELLON
WEALTH MANAGEMENT

Fundamentals Session – Grantor Trusts

Fundamentals Session –Donaldson – Grantor Trusts

Four most popular ways to cause grantor trust status but not inclusion in the gross estate

- Loan power
- Actual loan to grantor
- Add charitable beneficiaries
- Swap power – see Rev. Rul. 2008-22 for two requirements: (1) equivalent value and (2) exercise of power can't shift beneficial interests

Fundamentals Session –Donaldson – Grantor Trusts

Rev. Rul. 2004-64 – should you put a tax-reimbursement clause in a grantor trust?

- Grantor's payment of tax on trust income is not a gift to the beneficiaries
- Discretionary tax reimbursement clause DOES NOT cause inclusion in the grantor's gross estate (assuming there is no understanding that the trustee will reimburse the grantor when asked)
- Mandatory tax reimbursement clause DOES cause inclusion in the grantor's gross estate under §2036(a)(1).

Issues

- Tax reimbursement clause in a grantor trust is transferring money in the wrong direction
- There are also creditor protection issues – if the grantor can get assets from the trust, so should the grantor's creditors be able to get to those trust assets.
- Planning idea to get a step-up in basis - enter into a agreement with the trustee that the trustee will annually reimburse the grantor for income taxes paid on the trust income.

Why use swap power?

5 reasons:

- Swap out low basis assets
- Preserve loss
- Swap life insurance to avoid Section 2035
- Preserve GRAT gains
- Alternative to qualified personal residence trust

Fundamentals Session –Donaldson – Grantor Trusts

How to do a swap

- Do not swap property for property if the property is difficult to value
- Swap value for value
 - Use a Wandy type formula that will adjust

Toggling

- How to turn on grantor trust status:
 - Springing power
 - Power conferred by trust protector
 - Actual loans to grantor or grantor's spouse on an unsecured basis

- How to turn grantor trust status off
 - Renounce grantor power. Not likely a gift to the trust and probably has no income tax consequences.
 - Decant to a nongrantor trust (although some state's decanting laws may consider this a change in beneficial interest in the trust)

- How to turn grantor status back on – (1) have a third party committee that will make the decision or (2) loan without adequate security.

Fundamentals Session –Donaldson – Grantor Trusts

Issues with sale to and intentionally defective grantor trust:

- Should sale transaction be disclosed on gift tax return. No requirement but gets 3 year statute of limitations running.
- Death before note is paid off. Does death trigger income tax? Debate goes both ways. 2009 CCM says death is not an income tax recognition event. If there is gain, who reports – 1040 versus 1041.
- If grantor sells asset to the trust in an installment sale transaction, what is the cost basis of that asset? 3 possibilities:
 - Cost basis – what trust paid for the asset
 - Step-up basis at death under Section 1014(b)(1) - minority position
 - Carryover basis under Section 1015(b) which says in a non-gift transfer in trust, there is a carryover basis i.e., the trust takes the grantor's basis. This seems to be the correct answer.

Recent Developments

Estate and Gift Tax – 2020 Inflation Adjustments – Rev. Proc. 2019-44

- Estate, gift and GST exemption - \$11,580,000
- Can allocate increased GST exemption to old gifts
- Gift tax annual exclusion – remains the same at \$15,000
- Gift tax annual exclusion for gifts to non-citizen spouse - \$157,000
- Income taxation of estates and trusts – 2020 maximum tax rate reached at taxable income of \$12,950 for ordinary income, \$13,150 for long-term capital gains.

Bernie Sander's Wealth Tax

- Lowers estate tax basic exclusion amount to \$3.5 million and gift tax exclusion to \$1 million, neither indexed for inflation
- Increasing tax rates beginning at \$3.5 million (45%) to \$1 billion (77%)
- Objective: break up concentration of wealth
- Practical hurdle: U.S. Constitution. It prohibits direct taxes unless they are apportioned among the states.

Clawback – Final Reg. 20.2010-1(c)

- No clawback
- DSUE not reduced
- Use of exemption comes off the bottom – use it or lose it

Setting Every Community Up for Retirement Enhancement (SECURE) Act

- RDB changed from 70 ½ to 72
- IRA contributions allowed after 70 ½
- 10 year payout for all except Eligible Designated Beneficiaries
- Those who reach age 70 ½ prior to December 31, 2019 subject to old rules
- New rule for Qualified Charitable Contributions (QCD)
- Effect on conduit v. accumulation trusts

North Carolina Department of Revenue v. Kaestner, 588 U.S. (June 21, 2019)

- USSC upholds lower court decision that North Carolina statute taxing the accumulated income of a trust based solely on the residence of a contingent beneficiary residing in North Carolina violated the due process clause of the U.S. Constitution
- Narrow decision. Court stated in footnote 8 that they were not deciding what degree of possession , control or enjoyment would be sufficient to support taxation

Kress v. U.S., 72 F. Supp. 3d 731 (E.D. Wis. Mar, 26, 2019)

- Court allows tax-affecting of S corporation's earnings in valuing the company
- Opinion also illustrates the value of a comprehensive appraisal.

Jones v. Commissioner, T.C. Memo, 2019-101

- Court allowed tax-affecting in the valuation of both a partnership and an S corporation. Involved timber.
- Opinion also illustrates the value of a comprehensive appraisal.

CCA 2019-39002 – Anticipated Merger Must be Considered in Valuing Stock

- IRS concluded that a stock on a listed exchange had to be valued for gift tax purposes by taking into consideration an anticipated merger of the underlying company that was expected to increase the value of the stock.

Final Section 199A Regs Issued 11/22/2019

- Applies to estates and trust
- QBI, W-2 wages and UBIA allocated between estate and trust based allocation of DNI between the entity and its beneficiaries.
- Taxable income of an estate or trust for Section 199A purposes and application of the threshold amount (\$160,700 for 2019/ \$163,300 for 2020) is calculated after the income distribution deduction.
- Multiple trust rule designed to avoid getting around the QBI limits – two or more trusts with substantially same grantor and beneficiaries will be treated as a single trust for federal income tax purposes if a principal purpose for establishing multiple trusts is the avoidance of federal income tax.
- Regs cover how Section 199A applies to charitable remainder trusts, grantor and non-grantor charitable lead trusts, qualified subchapter S trusts and electing small business trusts.

Qualified Opportunity Zone Final Regs Issued

- Final regs say no step-up in basis for increase in value – the appreciation above the deferred gain gets no step-up
- Inclusion/acceleration events
 - Sale or exchange
 - Gifts
 - But not gifts to a grantor trust
 - Death is not an inclusion event

Dieringer v. Commissioner, 917 F. 3d 1135 (9th Cir. 2019)

- Upheld Tax Court decision that an estate tax charitable deduction for a contribution of stock to a private foundation which was based on date of death valuation was overstated.

PLRs 2019-32001-010 – Premature Termination of Trust Gives Rise to Gain

- Gain triggered when irrevocable trust terminated via a UTC nonjudicial settlement even though each beneficiary received the exact actuarial value of their interest in the trust.
- Also denied the income beneficiary any basis against which to reduce the gain i.e., the entire value of the beneficiary's share is taxed.
- IRS cited two revenue rulings, neither of which comes close to addressing the issue in the PLR. Rev. Rul. 69-486 (non-pro-rata distributions) and Rev. Rul. 72-343 (life tenant transfers his interest to remainderman).
- Grossly incorrect PLR but have to be aware of it as it is important for UTC modifications or premature terminations of trusts.

Uniform Law Developments

- Electronic wills
- Medium – can you have wills written on a tablet – noncontroversial
- Controversial – remote witnesses and remote notarizations. Allowed in NV and AZ. Also allowed in FL but not yet effective. IN has done the medium but not the witness and notarization.

Selected General and Special Sessions

Powell - Henderson

- Understanding Powell and its guidelines will help avoid complicated audits
- Bad facts case
- Retained rights by mother via her son equated to being able to designate who could possess the partnership property

Henderson - Estate of Powell v. Commissioner, 148 T.C. 18

- Powell-proofing documents
- Bona fide sales exception is your get out jail free card – significant and independent non-tax factors. Don't put a laundry list of those factors in your documents
- Fidelity Philadelphia case – to have a bona fide sale you have to have independent assets to address the purchase price – rule of thumb is 10% seed
- Look at the partnership like it is a trust – have distribution powers and liquidation powers in the hands of independent people

Henderson - Estate of Powell v. Commissioner, 148 T.C. 18

In a trust we can make irrevocable provisions but in an entity agreement under state law the people can get back together and take out the firewalls that were in your entity agreement. Therefore, when entities are transferred in trust put in the trust instrument that the trustee may not change unamendable provisions in the entity agreement in which you acquire an interest. Also, state in the decanting clause that you cannot decant away this prohibition on agreeing to amendments that are going to take out the firewalls. In other words, protect the firewalls in the governing instrument with provisions in your trust instrument.

Cantrell - Trusts as Eligible S Shareholders

- In addition to estates, only certain trusts are eligible S corporation shareholders
 - Grantor Trust – must have only one U.S. person as 100% grantor
 - Grantor Trust after owner's death* – 2 years beginning with D/D. §1361(c)(2)(A)ii).
 - Testamentary Trust* – 2 years after transfer of assets to trust. §1361(c)(2)(A)(iii).
 - Voting Trust
 - QSST
 - ESBT
- In all cases, the trust must be a domestic trust – can't be a foreign trust. §1361(c)(2)(A).

* May continue as an eligible S corporation shareholder by electing QSST or ESBT status.

S Corporation – One Class of Stock

- An ineligible S corporation shareholder terminates the S election
- Once terminated, no new S election for 5 years
- May request relief for inadvertent S election termination because of a late ESBT, QSST or S election without a user fee under Rev. Proc. 2013-30.
- All other circumstances require a private letter ruling with a \$30,000 user fee.

S Corporation – One Class of Stock

- All shareholders have to have equal rights to distributions and liquidations
- Different voting rights are ok
- Constructive distribution problem –S corporation where family members use corporation assets without reimbursing corporation for the use of those assets results in a constructive distribution when those distributions are not taken into consideration in making distributions. Results in a second class of stock and termination of the S election

S Corporation – Conversion to C Corporation

Reasons:

- 21% income tax rate of C corporation
- Can issue more than one class of stock
- Get benefit of Section 1202 exclusion
 - Caution: 1202 exclusion only available for those who were issued stock by a C corporation. Existing S corporation shareholders at the time of the conversion don't qualify, but shareholders issued stock after the conversion to a C corporation do qualify.

S Corporation – QSST Structure

- Can have only one beneficiary
- Don't confer Crummey withdrawal powers on multiple parties
- Don't give a QSST beneficiary a power of appointment

S Corporation – Why Use an ESBT v. QSST

- ESBT tax paid at highest tax rate (37%) at trust level
- With ESBT, no information goes to beneficiaries of the ESBT
- With QSST, Schedule K-1 reports information to the beneficiary which they report on their return
- If parents who have transferred stock to a trust for the benefit of their children and they don't want the children to know about the income of the S corporation, as ESBT is preferred over a QSST.

S Corporation – Shareholder Agreement

- Buy-sell agreement should include a provision that shareholders agree to preserve S corporation status.
- In the absence of a buy-sell agreement, have a separate agreement that the shareholders agree to preserve S corporation status. Consider including a clause that obligate the violating party to pay expenses for fixing the termination of the S election.

S Corporation – Decanting

- Decanting an ESBT or QSST could cause inadvertent termination of the S election.
- Example: decant QSST into a trust where there is more than one beneficiary or into a discretionary trust where all the trust accounting income is not distributed annually to the beneficiary.
- Beneficiary fails to make QSST election for the new trust or the trustee fails to make the ESBT election for the new trust.

Panel – Choosing Between Grantor and Non-Grantor Status

- Non-grantor trust (separate taxable entity) versus grantor trust (grantor or beneficiary is deemed owner even though the transfers to the trust are considered complete for estate and gift tax purposes).
- Conventional uses of grantor trusts:
 - First: An irrevocable trust that passes assets outside of the estate. Grantor pays the income tax so the trust gets tax-free growth and the grantor's estate is depleted by the income tax paid.
 - Second: To do tax-free swap of assets – substitute low basis assets from the trust for high basis assets owned by the grantor to qualify the low basis assets for a step-up in basis.
 - Third: For a tax-free freeze transaction. Assets to the grantor trust for full and adequate consideration for a promissory note. The appreciation of the assets over the interest paid on the note can be passed to the trust beneficiaries.

Panel – Choosing Between Grantor and Non-Grantor Status

- Benefits of using a non-grantor trust – how to give the beneficiary economic enjoyment of income without subjecting it to state income tax.
- Beneficiary lives in high income tax state
- Let the beneficiary use the trust property without making a distribution (the trustee may buy the beneficiary a home and let the beneficiary live in that home).

Panel – Choosing Between Grantor and Non-Grantor Trusts

- Section 678(a)(1) – BDOT – beneficiary deemed owned trust
- Section 678(a)(2) – BDIT – beneficiary defective inheritor's trust

Panel – Choosing Between Grantor and Non-Grantor Trusts

- BDOT – what are we trying to accomplish?
- This is just income shifting to people in a lower income tax bracket
- If you have a discretionary non-grantor trust and actual distributions are made to the beneficiary, it is going to actually distribute income to the beneficiary and he is going to pay income tax on it including tax on capital gains if the trustee “deems” capital gains being included in DNI.
- The objective is to have the income taxed at the beneficiary’s lower income tax rate but not actually have to make distributions to him.
- Concern: if beneficiary has a withdrawal right and they don’t withdraw, is there a gift from the beneficiary? Make sure the gift is incomplete.

Panel – Choosing Between Grantor and Non-Grantor Status

Uses of beneficiary owned trusts

- Beneficiary could also be treated as the owner of the trust if he once had the power to vest the income or corpus in himself and then partially released (or otherwise modified the power) AND retained a string that would cause the grantor to be treated as the owner. Assuming that the grantor is not treated as the owner of the trust, the beneficiary is treated as the owner of the trust. This is a beneficiary defective inheritance trust (BDIT).
- Beneficiary could also be treated as the owner of a trust if the trust is a QSST.
- A trust can be the income tax owner of another trust. A QTIP trust can be turned into a grantor trust, which enables the trust to have lower tax rates as well as transfer assets to another grantor trust. PLR 2016-33021.
- A power to withdraw may result in creditor issues depending on state law.

Panel – Choosing Between Grantor and Non-Grantor Trusts

INGs – Incomplete Non-Grantor Trust

- How to set one up and its ability to shift income tax attributes and take advantage of tax laws by being incomplete gifts and non-grantor trusts
- A critical aspect of the ING is to have a distribution committee made up of adverse individuals so we can trigger the incomplete gift without triggering income tax

Panel – Choosing Between Grantor and Non-Grantor Trusts

SECURE Act – Leaving IRA to a trust

- Leaving an IRA to a non-grantor trust will subject the IRA to the compressed income tax rates of trusts assuming no distributions are made to the beneficiaries
- Using a BDOT provision (giving a beneficiary a withdrawal right) in the non-grantor trust will cause the income of the trust to be taxed to the beneficiary, avoiding the higher trust income tax rates.
- Another option is to leave the IRA to a charitable remainder trust but if the individual beneficiary dies early, charity gets the money as the remainder beneficiary.
- One option is to leave the IRA to a 20 year term charitable remainder trust with a trust as the beneficiary during the term. That will get a 20 year stretch of the payments.

Moore – Planning for GST Tax on Non-Exempt Trusts

- Not much guidance on how GST tax applies to non-exempt trusts.
- Most guidance is on how to preserve grandfathering
- Taxable termination – termination of an interest in a trust (or trust arrangement) which does not trigger estate tax or gift tax and there is no non-skip person left in the trust. Tax rate is top estate tax rate times the inclusion ratio. Trustee pays the tax out of trust property. Tax due April 15. No increase in basis except for the portion of the GST tax attributable to appreciation.

Moore – Planning for GST Tax on Non-Exempt Trusts

- Taxable distribution – distributions from non-exempt trust to skip person that is not subject to estate or gift tax other than a taxable termination. Tax paid by transferee based on what the transferee receives. Basis is increased by GST tax attributable to the appreciation.
- Calculated on a distribution by distribution basis if you have multiple distributions during the year.
- If trustee pays the tax it is considered an additional distribution.
- Don't know if a loan to a beneficiary is a taxable distribution
- Don't know if use of trust property is a taxable distribution

Moore – Planning for GST Tax on Non-Exempt Trusts

- Section 164(a)(4) – can deduct GST tax on income distribution. DNI is carried out on the distribution and taxable to the beneficiary but income is reduced by the GST tax
- Distribution to charity is deemed to be a distribution to a non-skip person so there is no charitable deduction.

Moore – Planning for GST Tax on Non-Exempt Trusts

Three people who can do planning for GST non-exempt trusts:

- Transferor, if still living
- Beneficiary
- Trustee

Panel – Asset Protection Trusts

- 19 states have domestic asset protection trusts (DAPT)
- Issue: can non-resident use asset protection statute of another state?
- ACTEC chart on asset protection trust states
- Have client sign affidavit of solvency
- 15 states require a resident trust or corporate trustee qualified to do business in the state
- Resident should arrange for custody of assets in state and preparation of tax returns.

Panel – Domestic and Foreign Asset Protection Trusts

- Except for OK, trust must be irrevocable
- Should specify what state law governs the trust and who can change the governing law
- Gift tax issues – want an incomplete gift to avoid using exemption because if grantor gets assets back he will have wasted his exemption. Testamentary power of appointment will not render the gift incomplete
- NV has no exception creditors
- Civil law jurisdictions don't recognize trusts. Instead have civil law foundation which is like a corporation with no shareholders

Panel – Domestic and Foreign Asset Protection Trusts

Foreign asset protection trust

- No requirement of local assets
- No exception creditors
- Foreign asset protection trusts offer more protection than domestic asset protection trusts
- Fraudulent transfers – in Belize there is no statute of limitations. It doesn't matter if it is set up from fraud
- Cook Island – Rothchild and Rubin use most. 2 year statute of limitations
- Standard of proof – preponderance of the evidence or clear and convincing evidence in the U.S. but reasonable doubt in foreign jurisdictions.

Panel – Domestic and Foreign Asset Protection Trusts

Foreign asset protection trust

- Legal fees – American rule versus English rule
- Big reason foreign trusts are better – full faith and credit and comity not recognized in foreign jurisdictions

Panel – Domestic and Foreign Asset Protection Trusts

Domestic asset protection trusts

- Want to state in the trust that the asset protection trust jurisdiction is the governing law.
- Conflicts of laws – Restatement of Conflicts of Laws section 273 – governing law stated in the trust instrument and selected by the settlor governs.
- Conflicts of laws – Restatement of Conflicts of Laws Section 270 – must be a strong public policy to ignore settlor's selection of governing state law

Panel – Domestic and Foreign Asset Protection Trusts

Domestic asset protection trusts – formulation and design issues:

- The differences in the various state's statute of limitations on fraudulent transfers;
- Whether you need to have a resident trustee in the target states and, if so, what does the resident trustee have to do;
- What about the role of a trust protector and what is a trust protector permitted to do;
- Do you need to include a provision in the trust instrument specifying that the statutory scheme of the asset protection state will be the governing law with regard to the validity, construction and administration of the trust?

Panel – Domestic and Foreign Asset Protection Trusts

Domestic asset protection trusts – formulation and design issues:

- A number of states are enacting the Uniform Voidable Transfers Act.
- Section 10 and the underlying commentary of that act may be problematic and has some planners worried whether a non-resident of an assets protection trust state can set up an asset protection trust in an asset protection jurisdiction.

Panel – Domestic and Foreign Asset Protection Trusts

- More U.S. reporting for foreign trusts
- Trust (domestic or foreign asset protection trust) is a grantor trust as the settlor can get income (Section 677) or reversionary interest is greater than 5% (Section 673) or grantor can change beneficial interest (Section 674) or foreign trust (Section 679)
- Section 684 – transfer to a foreign results in gain recognition
- Filing requirements: Form 1041NR for foreign trust or Form 1040 for a domestic asset protection trust

Panel – Domestic and Foreign Asset Protection Trusts

- Form 3520 – U.S. person transfers assets to foreign trust or beneficiary gets distribution from foreign trust
- Form 3520A – required by foreign trust – need U.S. agent appointed
- Penalty for not filing – 35%
- Foreign Bank Account Report (FBAR) – 4/15 filing date but can get 6 month extension. Must be filed by anyone with authority over foreign accounts

Choate – Inherited Retirement Benefits

- SECURE applies to Roth IRAs – they are subject to the 10 year payout for non-eligible designated beneficiaries. When distributed you lose the tax-free accumulation.
- Conduit v. accumulation trust – in conduit trust the surviving spouse is deemed to be the sole beneficiary of the trust so an IRA payable to a conduit trust for the benefit of a spouse is entitled to the stretch. If the IRA is payable to an accumulation trust for the benefit of the spouse, the spouse is not deemed to be the sole beneficiary so the 10 year rule applies.
- If IRA is payable to a conduit trust for a non-spouse beneficiary, no minimum required distribution is due for that trust after SECURE so 100% has to be distributed in 10 years.

Choate – Inherited Retirement Benefits

- Generally, the beneficiary of an accumulation trust to which an IRA is payable will have a 10 year payout. This applies to a spouse as the spouse is not deemed to be the sole beneficiary of an accumulation trust.
- An exception is made for a disabled and chronically ill beneficiary. They can get a life expectancy payout under an accumulation trust. This is an important exception.

Choate – Inherited Retirement Benefits

- Custodian IRA versus trustee IRA – in a trustee IRA the IRA provider is the trustee and takes on investment and distribution decisions.
 - Bad news for trustee IRA. They are geared to stretch IRA and you don't need an attorney to draft the trust. This is gone after SECURE. However, the trustee control over investments and distributions remains.
- Beneficiary has to take minimum required distributions (MRD) in the year of death when the IRA owner didn't take the distribution before he died.
 - If MRD is missed, file Form 5329, report the amount of the MRD and show zero on line 3 and write "RC" in the column for "reasonable cause." Also attach a statement explaining the reasonable cause and attach a copy of the check showing the withdrawal of the missed MRD.

Choate – Inherited Retirement Benefits

How to get around the 10 year rule:

- Name a charitable remainder trust as the beneficiary of the IRA
- Roth conversion

Choate – Inherited Retirement Benefits

- SECURE applies to deaths after 2020
- Effective date – once pre-2020 designated beneficiary dies, the 10 year rule applies. Get a life expectancy payout for a pre-2020 designated beneficiary but when the designated beneficiary dies, the next beneficiary is stuck with the 10 year payout. Under pre-SECURE law, on the death of the designated beneficiary, the successor beneficiary got to step in the shoes of the designated beneficiary and continue to take distributions over the designated beneficiary's remaining life expectancy.
- Example: IRA owner dies and designated beneficiary dies before 2020. The 10 year rule doesn't apply so the successor beneficiary can take over the designated beneficiary's remaining life expectancy.

Choate – Inherited Retirement Benefits

- Example: IRA owner dies, naming spouse as the designated beneficiary. Spouse dies before 2020. The 10 year rule doesn't apply. The successor designated beneficiary can take over the deceased spouse's remaining life expectancy.
- Life expectancy tables updated in November, 2019 and will kick in in 2021. Anyone calculating minimum required distributions will switch to the new tables in 2021. See Prop. Reg. 1.401(a)(9)-9.

Choate – Inherited Retirement Benefits

- An eligible designated beneficiary (EDB) is determined as of the date of death. A designated beneficiary is determined as of 9/30 of the year after death. Thus, you can still get rid of someone who is not a designated beneficiary by the 9/30 deadline. The 9/30 deadline still applies.
- Disclaimers – the beneficiary of an IRA owner who died and did not take his MRD in the year of death can still take the MRD and not have that treated as an acceptance of the IRA for disclaimer purposes.

Choate – IRA to Charity

- IRA providers make a charity named as the beneficiary of an IRA open an inherited IRA account (with all of the account opening requirements, like the name, SSN and address of all of the charity's board members) and once opened, the decedent's IRA will be payable to the newly opened inherited IRA from which the charity can withdraw the IRA proceeds.
- How to avoid the above problem. Open a donor advised fund (DAF) and leave the IRA to the DAF. In the DAF name the charity as the beneficiary of the DAF account holding the IRA. At death the DAF will do all the paperwork to deal with the IRA provider.
- The April, 2020 edition of Trusts and Estates magazine will have an article by Christopher Hoyt on using a charitable remainder trust for retirement benefits.

Choate – IRA to Charity

- Charitable gift of an IRA from a trust – complying with Section 642(c)
- Must be (1) paid out of gross (taxable) income and (2) must be paid pursuant to the governing instrument.
- Pay attention to the special ruled under the separate share rule regulation for income in respect of a decedent (IRD) – allocated to the a share that could potentially be funded with the IRD.

Choate – IRA to Charity

- Qualified charitable distributions (QCD) – the 70 ½ rule still applies to QCD purposes
- Under SECURE, an individual who is still working (must have earned income to contribute to an IRA) can make a tax deductible contribution to an IRA after age 70 ½. However, under SECURE any QCD must be reduced by the tax deductible contribution made to the IRA after age 70 ½. Must reduce the QCD for ALL tax deductible IRA contributions made after 70 ½.
- Example: Person over 70 ½ makes tax deductible contributions to an IRA in 2020, 2021 and 2022 but makes no QCD during those years. He makes a QCD in 2023. He must reduce the QCD by the amount of the tax deductible IRA contributions he made in 2020, 2021 and 2022.

Disclosure Appendix

The information provided is for illustrative/educational purposes only. All investment strategies referenced in this material come with investment risks, including loss of value and/or loss of anticipated income. Past performance does not guarantee future results. No investment strategy or risk management technique can guarantee returns in any market environment. This material is not intended to constitute legal, tax, investment or financial advice. Effort has been made to ensure that the material presented herein is accurate at the time of publication. However, this material is not intended to be a full and exhaustive explanation of the law in any area or of all of the tax, investment or financial options available. The information discussed herein may not be applicable to or appropriate for every investor and should be used only after consultation with professionals who have reviewed your specific situation. BNY Mellon Wealth Management may refer clients to certain of its affiliates offering expertise, products and services which may be of interest to the client. Use of an affiliate after such a referral remains the sole decision of the client.

BNY Mellon Wealth Management conducts business through various operating subsidiaries of The Bank of New York Mellon Corporation.

©2020 The Bank of New York Mellon Corporation. All rights reserved.

This program is not produced in conjunction with or endorsed by the Heckerling Institute on Estate Planning. The Heckerling Institute is not responsible for its content. The Heckerling Institute on Estate Planning is sponsored by the University of Miami School of law. For information about the Heckerling Institute visit www.law.miami.edu/heckerling

Thank you!