

CURRENT EVENTS

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1. Separate accounts treatment denied for terminating trust named as beneficiary of IRA. PLRS 200317041, 200317043, 200317044
 - A. **Planning.** Beneficiary form must create separate accounts.
2. Separate account treatment denied for estate beneficiary but owner's remaining life expectancy – OK (death after RBD). PLR 200343030.
3. Rollover permitted through estate (PLR 200325008) and through trust (spouse sole beneficiary of marital trust). PLR 200346025
 - A. **Significance.** Rollover still possible.
4. Waiver of the 60-day requirement for tax-free rollover. Rev Proc 2003-16. Automatic: Financial institution error. Case-by-case waiver. (5 recent PLRS waived 60 day period – sickness, bank opened brokerage account vs. IRA account). PLRS 200401020; 200401023; 200401024; 200401025; 200402028
5. Life expectancy of oldest trust beneficiary allowed. PLR 200235038 12/5/03
 - A. **Significance.** Trust beneficiary. Trustee-to-trustee transfer. No contingent beneficiary issue.

6. Crummey withdrawal powers to charity. Annual exclusion denied. (“Agreement” not to withdraw) PLR 200341002
7. IRS loses claim against bankrupt debtor’s interest in Erisa qualified plan U.S. v Snyder (2003, CA, 9)
IRS wins against debtor’s TSA. Bankruptcy protection denied since annuity assets were not held in trust. (Adams, Raymond and Janet (CA 6, 2003) (Reported 1/12/04)
8. Marital deduction allowed for bequest of closely-held business interest (“Power to make trust assets productive”). PLR 200339003
9. Living wills and durable power of attorney must contain HIPPA release language.
10. Final regs issues (12/16/03) on QJSA and QPSAS regarding notice requirements (effective for annuity starting date after 10/1/04 and QPSA after 7/1/04)
11. Retirement benefit excluded from self-employment tax to retiring member under IRC 1402(A)-(D) – written plan, no further service, capital amount paid, payments continue until death. IRC 200403056(1/16/04).
12. Timing restrictions of recipient’s plan do not apply to IRA rollover to QRP if separate accounting. (Rev. Ruling 2004-12).
 - A. **Significance.** QRP provision prohibiting in-service withdrawal n/a.
13. Qualified disclaimer of LLC interest not defeated by earlier participation in voting. PLR 200406038
 - Daughter died.
 - Mother is PR, beneficiary and LLC manager.
 - Held. Manager voting as PR does not defeat disclaimer under IRC 2518.

14. IRS issues technical corrections for qualified dividends. IR 2004-22.
- **Significance.** Qualified dividends commencing 2003 qualify for 15% rate (or 5% to extent dividends would be taxed in 10%/15% ordinary income tax bracket). Pass through entities (LLCs, S corps and estates) with fiscal year that began in 2002 may pass through dividends received in 2003 to members, shareholders, and beneficiaries. 60 day holding period has also been eased.
15. IRS attacks “abusive” springing value life insurance in retirement plans. IR 2004-21. Effective 2/13/04.
- Plan purchases life insurance with significant premiums
 - Policy structure – little or no cash value
 - Plan distributes policy to participant
 - Abuse – low value for contribution and distribution
 - Held FMV will include premiums, mortality charges
16. Regs Revise Trust Accounting Income under IRC 643(b). Effective tax years after 1/2/04.
- Significance.**
- Marital deduction
 - CRTs
 - Capital gain included in income
17. Estate tax marital deduction allowed despite ambiguous authority to withhold income in case of disability.
- Marital Trust. “All income.” Qualifies for QTIP
 - General Power. Withhold income for any beneficiary who is disabled.
 - Held. Marital deduction still OK. Estate of Whiting, Jr. vs IRS TC Memo 2004-68
 - **Significance** Draft away provisions that would jeopardize marital deduction.
18. Court allows administrative expenses deduction for interest paid on bequest after 1 year under IRC 2053. Held – estate tax deduction of \$1,052,055 interest allowed.
- Significance.** Do not forget EPIC 2904 requires statutory interest after 1 year on pecuniary devises.

19. IRS ruling approves poorer spouse funding technique. PLR 200403094.

- PLR permits predeceasing spouse (W) to fund credit shelter trust for the surviving spouse (H) using assets owned by surviving spouse (H).
- Give spouse (W) general power of appointment in Grantor's (H) estate effective only if W dies first in a formula amount equal to spouse's (W) applicable exclusion amount.
- Consider general power of appointment in favor of creditors and special power of appointment to spouse's credit shelter trust.

Significance. Good funding technique to avoid transferring assets to each in trust.

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