Many taxpayers have accumulated significant assets in their retirement accounts including IRA accounts (both traditional and Roth IRAs). These assets can be made payable to a trust instead of directly to an individual beneficiary for both estate planning and asset protection purposes.

Some advantages of making an IRA trust the beneficiary of a retirement account include the following:

- If the IRA death benefits are payable directly to a beneficiary, then the death benefits may be accelerated at any time by the beneficiary;
- If the IRA death benefits are payable to a trust, then the payments can be payable in a manner that results in an extended payout period to the trust beneficiary;
- The life expectancy of the appropriate trust beneficiary may be used in determining the payout period;
- The remainderman of the trust can be determined by the IRA owner on the death of the primary trust beneficiary;
- The life expectancy of a child or grandchild can be used in determining the payout period if the child or grandchild is the appropriate trust beneficiary;
- The IRA trust can provide for greater asset protection since most states do not protect inherited IRAs from creditors of the IRA beneficiary; and
- The income tax brackets of the appropriate trust beneficiary may be significantly lower than the income tax brackets of the surviving spouse of the IRA owner under the new tax law effective January 1, 2018.

Planning Considerations

If the “kiddie tax” is an issue, then use Roth IRA trusts if the IRA owner has accumulated sufficient...
Roth IRA assets. Alternatively live with the “kiddie tax” for whatever limited period is involved since the payout period for a young trust beneficiary is significant. For example, if a child or grandchild trust beneficiary is age 16 in the year after the IRA owner’s death, then the IRS single life expectancy is 66.9 years.

Consider giving the trust beneficiary a “5 and 5 power” over the trust assets when the trust beneficiary attains age 25 or older.

Many clients who have a substantial net worth in their retirement accounts may wish to transfer these types of accounts to their children and/or grandchildren by means of an IRA trust arrangement.

The drafting of an IRA trust should be done in a manner that is consistent with the IRS final regulations and the related IRS rules discussed later.

On the death of the IRA owner and/or retirement account owner, then the post-death IRS compliance rules regarding IRA trusts must be followed in order to avoid the loss of the extended payout period.

The author is also aware of a number of situations whereby the IRA trust was drafted in a manner that was inconsistent with the IRS rules which then resulted in adverse tax consequences to the trust and trust beneficiary as well.

The bottom line is that the estate practitioner should familiarize himself/herself with the IRS rules involving IRA trusts, including those contained in the IRS regulations, the Internal Revenue Code, Revenue Rulings, letter rulings and IRS Notices. That may be a problem for a practitioner who is not well versed in these rules.