

Don't Let the IRS Take 35% of Your 401(k)



Linda Davis Friedland

Pension plans are quickly disappearing in both the public and private sectors. As a result, traditional Individual Retirement Accounts (IRAs) and defined contribution plans under Section 401(k) of the Internal Revenue Code (401ks) will most likely become the most significant assets in many estate plans.

These assets are typically “qualified,” meaning that the money is deposited into these retirement accounts on a pre-tax basis, with the income taxes being collected upon withdrawal.

By now, most people know not to place qualified retirement assets into revocable living trusts. However, simply naming a trust as the beneficiary to an IRA or 401(k) plan could present its own hazards. For example, a lay trustee, who fails to consult with an attorney or other tax professional, could conceivably liquidate the entire retirement account in order to place all of the assets into the trust at one time, believing this was required by the beneficiary designation. In this scenario, the placement of the retirement assets into the trust would be a “lump sum distribution” to the trust, meaning that the full value of the assets transferred would be taxed all at once – as ordinary income to the trust at the trust tax rate. For the tax year ending December 31, 2012, trust income over \$11,650 will be taxed at a rate of 35%. So if a \$500,000 IRA is liquidated and placed into a trust, the trust will be deemed to have “earned” \$500,000 in ordinary income for that one year, and taxed accordingly. The best solution is to spread the distributions over time, so that the distributions are smaller, taxed at a lower rate and more easily offset by expenses.

A person may begin receiving distributions from his retirement account at age 59 ½, but he must begin receiving distributions when he reaches the Required Beginning Date (RBD), which is currently by “April 1st of the year following the year in which one reaches age 70 ½,” according to the Treasury Regulations. As such, an account owner may not avoid paying income taxes by simply refusing to take distributions from his retirement account.

The Internal Revenue Code also limits the amount of “spreading” that an account owner may do to reduce his tax burden or to leave more for his children, by establishing a minimum amount that must be distributed from his retirement account on a yearly basis. This is known as, Required Minimum Distributions (RMD), and they are calculated according to a formula based on the account owner’s life expectancy. An experienced estate planning attorney can help ensure that this spreading of distributions over time continues after the death of the account owner and can even reduce the income taxes further by having the distributions spread out over the life expectancy of the beneficiary.

Having an individual named as the designated beneficiary (as opposed to “the trust”) for each retirement account is the first step toward ensuring that the distributions will be paid out over the beneficiary’s life expectancy. A surviving spouse, who is named as a beneficiary, may simply rollover the retirement account into his or her own traditional IRA. However, beneficiary designations become more complicated upon the second to die if minor children are involved.

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Attorneys Join Livonia Office

We are pleased to announce that two attorneys recently joined our Firm.

Julianne Polgar has joined our Firm as an associate in our Livonia office where she practices in the areas of municipal law and appellate law. She handles municipal cases in both state and federal court. Additionally, she focuses on writing briefs for submission to all levels of state and federal courts, arguing cases in both the state and federal courts of appeals and performing research for all areas of law handled by the Firm.

Julianne received a Juris Doctor degree from the University of Detroit Mercy School of Law and a Bachelor of Arts degree the

University of Michigan. She can be reached at (734) 261-2400 or jpolgar@cmda-law.com.

Douglas Curlew has joined our Firm as an associate in our Livonia office where he practices in the areas of appellate law and personal injury defense. Additionally, he performs research and writing assignments for all of the Firm's practice areas.

Doug received a Juris Doctor degree from Wayne State University, a Ph.D. from the University of Michigan and a Bachelor of Arts degree the University of Michigan- Dearborn. He can be reached at (734) 261-2400 or dcurlaw@cmda-law.com.

Don't Let the IRS Take 35% of Your 401(k) (cont.)

The table below shows the period for distribution of retirement assets if the account owner dies BEFORE the RBD.

Account Owner Dies Before RBD	Period for Minimum Distributions
Beneficiary Designated	Beneficiary's Life Expectancy
No Designated Beneficiary	Five Years from Owner's Death

The above table makes it clear that failing to specifically designate a beneficiary for retirement assets can reduce the period for distribution from the beneficiary's life expectancy to five years, thereby substantially increasing the beneficiary's income tax burden. The next table shows the period for minimum distributions if the account owner dies AFTER the RBD.

Account Owner Dies Before RBD	Period for Minimum Distributions
Beneficiary Designated	Longer of Beneficiary's Life Expectancy or Deceased Owner's Life Expectancy
No Designated Beneficiary	Deceased Owner's Life Expectancy

The above table demonstrates that once the account owner has reached his RBD, having a beneficiary specifically designated could mean the difference between an account owner's ten-year life expectancy and a beneficiary's 40-year life expectancy. The tax consequences or savings could be substantial.

While tax savings is important, it is simply impractical to designate a minor child as a beneficiary to a retirement account. Having a trust in place would be a necessity. Done properly, a trust can be drafted so as to provide trustee oversight, yet still be deemed as having individually named beneficiaries. These trusts are known as "conduit trusts" or "see through trusts." These trusts will only work, however, if specific rules are observed.

The trust must have a clearly identifiable beneficiary. A trust that does not have a clearly identifiable individual beneficiary or one that includes any undetermined beneficiaries, such as "issue," "heirs," "children" or provisions for a charity, could result in the retirement account being deemed as having no designated beneficiary at all, which would in turn result in the acceleration of income tax due. To avoid this, the beneficiary designation language must be drafted carefully in both the trust and the plan documents. For a trust to qualify as having a designated beneficiary, the following four elements must be met at the time the Required Minimum Distributions are determined:

1. The trust is valid under state law;
2. The trust is irrevocable;
3. The trust beneficiaries and their ages are identifiable; and
4. Trust documentation is provided to the plan administrator by October 31st of the year following the participant's death.

If all four requirements are met, then each beneficiary's minimum required distribution will be calculated using the oldest trust beneficiary's life expectancy.

Use of a conduit trust to receive an account owner's retirement assets should be determined on a case-by-case basis, depending upon the account owner's goals, desires and financial situation. Owners of qualified retirement assets should consult with an experienced estate planning attorney as the tax laws, account owner's goals and the value of retirement assets continue to change.

Linda Davis Friedland

Linda Davis Friedland is an attorney in our Livonia office where she concentrate her practice on Commercial Litigation, Employment and Labor Law, Corporate and Business Law, Estate Planning, Utilities Law and Municipal Law. She can be reached at (734) 261-2400 or lfriedland@cmda-law.com.

CMDA Happenings

Sponsor of Nonprofit Fundraising Event

Last month, CMDA was a proud sponsor of Advantage Health Centers' "A Night of Magic" fundraising event. Advantage Health Centers is a nonprofit agency committed to improving the health of individuals and the community at large by offering care to everyone regardless of insurance status or homelessness.

Elected to Board

Carla Testani, a family law attorney in our Livonia office, has been elected to the Board of the Wayne County Family Law

Bar Association. She will serve as the Board's Secretary.

Carla focuses her practice on issues surrounding divorce, annulment, child custody, child support, spousal support, pre- and post-nuptial agreements and more.



Carla G. Testani

She can be reached at (734) 261-2400 or ctestani@cmda-law.com.

Attorney Profile: Eileen K. Husband



Eileen K. Husband

In this month's newsletter, Partner attorney Eileen K. Husband is profiled. Ms. Husband specializes in the area of labor and employment law, franchising and business law, higher education law, contracts, civil litigation and provides general counsel advice to businesses and colleges.

She has been recognized by her peers for her commitment to excellence in the practice of law as a Michigan Lawyer's Weekly Woman in The Law Award recipient. This commitment has carried her through a very successful career including her years as General Counsel to Little Caesars Enterprises, Inc. There she worked closely with the owners and upper management on all legal facets of the business, such as major strategic initiatives and projects, construction of a manufacturing plant, global franchise models, employment matters, advertising and supplier contracts. Prior to joining Little Caesars Ms. Husband served as Assistant General Counsel for the Suburban Mobility Authority for Regional Transportation (SMART) where she was responsible for labor and employment matters related to a work force represented by four unions. Ms. Husband was also an original contributor to the first edition of ICLE's "Employment Law in Michigan- An Employer's Guide" where she offered subject content and reviewing the submissions of other attorneys.

Ms. Husband was also part of Detroit's emerging casino industry working onsite in the development and opening of Greektown Casino. At Greektown she handled matters related to labor relations, contracts, regulatory compliance, litigation and advertising. When the Greektown Casino project

was completed Ms. Husband accepted a call to return home to CMDA (where she spent her first year of practice) as a Partner to head the Labor and Employment Law Section of the Firm and serve as Assistant General Counsel to the Michigan Community College Risk Management Authority, which provides legal representation and advice to its 20 College members across the State.

Her commitment to excellence has earned her a remarkably high rate of case dismissals and labor arbitration wins. Partner Ronald Acho credits much of Ms. Husband's success in litigation to her "unique ability to cross-examine the most stubborn, rude and intimidating witnesses with a disarming charm and noticeable concern for people that has resulted in valuable admissions leading to her outstanding winning record of dismissals."

Ms. Husband frequently speaks on franchising and provides training for risk management groups and large employers regarding employment matters. She is also a Certified Mediator/Facilitator. But, Ms. Husband is not all big business. She donates her time teaching seminars on legal issues related to start-up companies for the State's Small Business Administration Program at Schoolcraft College and takes great pride and satisfaction in seeing her business clients grow.

She enjoys spending time with her family, golfing, walking the shores of Lake Michigan, star gazing and attending football games at her undergraduate alma mater, the University of Michigan, where she majored in Economics. Ms. Husband's Juris Doctorate is from the Detroit College of Law, the oldest continuously operating law school in the United States (now named the Michigan State University College of Law), where she reminds everyone there was no green and white to conflict with her maze and blue loyalty.

Ms. Husband can be reached at (734) 251-2400 or ehusband@cmda-law.com.

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On Law is a monthly publication from Cummings, McClorey, Davis & Acho, P.L.C.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features should be addressed to the attention of Jennifer Sherman.

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