TRUSTS AS IRA BENEFICIARIES
Mercer County Estate Planning Council
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NB: THIS ARTICLE DISCUSSES THE PRE-SECURE ACT RULES.

The key to understanding the rules governing qualified retirement plans and mastering those rules to find the best solution for your clients, is a working knowledge of the federal Internal Revenue Code (IRC) at §§ 401 and 408, the corresponding regulations and the definitions and key concepts underlying those rules.

The qualified trust rules of IRC § 401(a) apply to traditional individual retirement accounts (IRA's). A traditional IRA is an account funded with after tax dollars that are deductible from the taxpayer's current income in the taxable year, which (with certain exceptions) is not subject to income tax until the funds are distributed out of the account. The value of a traditional IRA lies in the ability to defer taxation on income earned by the IRA owner for many years into the future. A Roth IRA is an individual retirement account which is funded with after-tax dollars. No deduction under IRC § 219 for a contribution to a Roth IRA is available. See IRC § 408A(c)(1). Any qualified distribution from a Roth IRA is not includible in gross income IRC § 408A(d)(1). A qualified distribution from a Roth IRA must be made on or after the date the Roth IRA owner reaches the age of 59 ½, which is made to a beneficiary (or to the state of the Roth IRA owner) on or after the death of the IRA owner, attributable to the individual's being disabled or which is a "qualified special purpose" distribution.

The rules applicable to qualified trusts under IRC § 401(a)(1) apply to individual retirement accounts. That is why the "qualified trust" rules of IRC § 401(a)(1) and the

corresponding regulations are relevant to individual retirement account planning, including with trusts.

Under IRC § 61(a)(3), all income is taxable unless there is an applicable exception. The qualified plan and individual retirement account rules provide for a deferral of taxation on the income from the IRA (or the qualified plan) which meets with the requirements for treatment as a "qualified trust" under IRC § 401(a)(1). The result of satisfying these rules is the magic of deferral! The period of deferral will depend on on several factors, including (1) whether the IRA is a traditional IRA account or a Roth IRA account; (2) whether there is a **designated beneficiary or beneficiaries**; (3) whether the designated beneficiary is an individual or a trust which is able to qualify for special treatment under the "see-through" trust rules; (4) whether that designated beneficiary is a surviving spouse versus an individual with a different relationship to the IRA account owner; (5) the age of the IRA account owner at death; (6) whether the account owner had already begun to take out distributions as of the date of death; (7) whether we can identify the oldest designated beneficiary (if there is more than one) and (8) what that individual's age is.

T.R. § 1.401(a)(9)-4 supplies the definition for who can qualify as a "designated beneficiary." This is the person who is named outright as the beneficiary due to the affirmative election of the IRA account owner. A designated beneficiary need not be specified by name in the plan in order to be a designated beneficiary so long as the individual who will be the beneficiary is identifiable under the plan. T.R. § 1.401(a)(9)-4.

The designated beneficiary could include a class that is capable of expansion or contraction.

Ex. 1. *All my natural born children then living at the time of my death.*

Only individuals may be designated beneficiaries. § T.R. 1.401(a)(9)-4, Q & A 3. Therefore, the IRA owner's estate is not a designated beneficiary. If a person "other than an individual" (i.e., an estate or a nonprofit entity) is designated as the beneficiary of the IRA owner's account, then the IRA account owner is treated as having no DB, even if there are also individuals who are designated as beneficiaries.

Ex. 2. *To my three children and to the ABC Preschool (a qualified non-profit entity).*

In the example above, there is no beneficiary which is a designated beneficiary, unless we take further action to correct the situation.

There is a **five year rule** which is the default setting, under which if an employee dies prior to taking his or her scheduled distributions, the entire interest of the employee must be distributed out of the account within five years after the death of the account owner. So to the extent this rule applies, the deferral is lost. You can opt out of the five year rule if there is a designated beneficiary (DB), which means that there is deferral and a reduction of taxation.

It is also very important to be familiar with non-tax principals having to do with the law of trusts. What is a trust? A trust is a relationship created by a settlor upon entrusting a *res* (a property interest) to a Trustee for the benefit of the beneficiary. In the case of an individual retirement account (IRA) left in trust, the settlor is the IRA account owner, or participant, who is leaving the future value of an IRA as of the date of the owner's death to the designated beneficiary or beneficiaries in trust.

Typically, the agreement which created the trust is memorialized in a written document. Trusts often provide the IRA account owner with a mechanism to control who will receive the IRA account proceeds and when, in the trust document. Trusts are basically about flexibility and control. Drafting a trust enables the IRA account owner to cherry-pick the terms of the trust that are best suited to effectuating his or her intent.

> ***Ex. 3***. *Harry has an IRA which he established and funded. His adult child who suffers from bipolar I disorder but is presently able to work despite this chronic condition. Harry may not want to leave the account proceeds outright to the child (who could spend it down overnight in a manic episode) and the boilerplate provisions of an IRT document may not provide sufficient flexibility to accomplish the IRA owner's goals. With a special need trust*[1] *drafted to give the trustee the discretion to distribute if the adult child should be well-functioning, or to refrain from making any distributions, if the child is on public benefits and the distributions would reduce the maximum benefit amount received by the adult disabled child, the IRA account holder's goals may be better served.*

Just as with any other type of trust, in drafting IRA trusts, it is important to be familiar with your state's laws. As of the date these materials are written, the Uniform Trust Code has been adopted in at least 35 states. While the validity of a trust is not generally in issue, it can be called into question in the event of a dispute regarding capacity, and/or undue influence, an improper purpose, or if the trust arrangement is not reduced to a written document (statute of frauds) or if the trust language violates the rule against perpetuities as adopted in your jurisdiction.

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[1] A special needs trust, also known as a supplemental needs trust or a supplemental benefit trust, may be used to provide financial assistance to a disabled person (the trust beneficiary) without disqualifying the beneficiary for certain government benefits, such as Medicaid or SSI. The trust may be established using the disabled person's own funds (a self-settled trust) or the funds of a third party who does not have a legal obligation to support the trust beneficiary (a third-party trust). See e.g. *H.Rep.Ways and Means Committee, November 12, 2014, ABLE ACT OF 2014.* Special needs trusts function as vehicles to hold assets to fund the cost of extraordinary expenses incurred to enrich the care and activities provided to a disabled individual who receives public benefits, programs such as Medicaid, Supplemental Security Income and the Housing and Urban Development (HUD) voucher program. If the special needs trust is properly drafted and administered, it will be disregarded as a resource in determining eligibility for public benefits on the part of the disabled beneficiary.

You should also be familiar with the provisions of other states' laws, because the scrivener of the trust has the ability in some circumstances to select what law applies. So if you can opt into a more favorable set of rules, why wouldn't you do that? For instance, if you are interested in protecting the principal of the trust in the event of a beneficiary's future divorce or child support judgment, you would prefer the trust to be interpreted under the law of a conservative state such as South Dakota, as opposed to the law of a state which has more liberal provisions on this issue, such as California. *See e.g. In re Cleopatra Cameron Gift Trust*, *2019 S.D. 35 (June 26, 2019).*

One important type of IRA trust is the **conduit trust**, in which all of the income is passed through to the lifetime beneficiary. It is easier to qualify a conduit trust named as the beneficiary of an IRA for the IRS, due to the fact that income is pushed through the trust and out to the beneficiary and therefore is subject to income taxation.

In contrast, the IRS may give stricter scrutiny to an accumulation trust, which is a trust in which the income is accululated within the trust "pot." A special needs trust, where the trustee has absolute and unfettered discretion whether or not to make distributions should be structured as an accumulation trust. If it is structured as a conduit trust, then the income attributable to the disabled beneficiary will decrease or end the eligibility of the disabled beneficiary (who is now being treated as having received in the income from the trust even if she is not actually receiving the income due to the trustee's lack of exercise of discretion to make distributions. So a conduit trust is not well-suited to a special needs trust. However a conduit will work to hold an IRA account and protect from being paid out too rapidly or for the benefit of minor children or grandchildren, or even a spouse.

Correctly drafting a trust to hold a individual retirement account and utilizing the "see through" rules to maximize deferral is complicated. There are a lot of potential pitfalls and it is not easy to get it right. Consequently, naming a trust as the beneficiary of an IRA is not always the best option. It may make sense for some clients to use a simpler and less expensive planning strategy. This can include either naming a beneficiary outright or using a trusteed IRA (also referred to as an **IRA trust** or "**IRT**."). These strategies are less complicated, less expense and less likely to go awry.

Naming a beneficiary outright may be a good choice where the IRA account is small or is expected to be entirely paid out shortly after death, to pay for debts, expenses and taxes.

An IRT can combine the income tax deferral available with an IRA with the flexibility and control of a trust and is usually less expensive than drafting a trust from scratch. A financial company administers the IRT. An IRT works like this:

> ***Ex. 4***. *Johnny Comelately, who is age 67, leaves his traditional IRA with a balance of $500,000 to his wife, Ellen Early for life, remainder to the children in an IRT. Best Bank Co. administers the IRT. Just before reaching the age of 70 ½, Johnny has a stroke and is incapacitated. Best Bank Co. can make distributions to Johnny if there are disability provisions in the IRT document. After Johnny's death, Best Bank Co. can administer the IRT for the benefit of Ellen, and ultimately Johnny's children.*

An IRT is potentially a good choice when the account value is on the larger side, and the owner of the IRA wants deferral and also wants to control what will happen to the IRA account after the death of the first beneficiary. This might be the case if the IRA owner wants to leave the funds in the IRA account first to a second spouse, with the remainder to the biological children of the participant. If the IRA were left to the second spouse outright, the owner could effectively lose control of the IRA proceeds. The use of an IRT (or a trust drafted from scratch) can enable the IRA owner to reach from beyond the grave to control, post-mortem, who receives

the IRA proceeds after the death of the second spouse at potentially a lesser cost than with a trust drafted from scratch by an attorney. An IRT may also be a viable and cost-effective solution where the IRA owner wants there to be regular payments to children or other heirs, without giving up control of the IRA proceeds to such heirs. Because a form for the IRT is typically pre-approved by the IRS, it is generally assumed that IRT's are less likely to fail.

In some cases, leaving an IRA outright to a beneficiary or in an IRT is simply not enough to accomplish the IRA owner's intent. This may be the case where there value of the IRA account or accounts is large, or there are minor children, or there is a disabled beneficiary. Naming a trust as a beneficiary of a parent's IRA might make sense where the child (who is the primary beneficiary of the parent's IRA) is extremely successful, seems to have a rocky marriage, or is in a high risk profession. In any of these circumstances, both parent and child and so may be disinclined to exhaust the IRA proceeds. Naming a trust as the beneficiary of an IRA may also make sense where the IRA owner wishes to leave the IRA proceeds to a non-profit, but something additional must happen but wants to maintain flexibility and control over the account even after the death of the first beneficiary. For instance, maybe the IRA owner wants to leave the IRA account or accounts to a beneficiary class capable of expansion (i.e., to my grandchildren then living at the time of my death, or to such of my grandchildren, who, as of the date of my death, are working in the family business/attending college), and a trust is the ideal vehicle to accomplish this end.

In some states, more so than in others, it may be a good idea to name a trust an IRA account beneficiary for creditor protection once the funds in the IRA are distributed from the IRA account itself, such as in an accumulation trust. This might not be necessary in states where state law protects IRA proceeds. See *In Re Jones, 123 A.F.T.R. 2d 2019 1507 (Bankr. S.D. Ill.,*

*April 15, 2019)(*Trustee's objection to debtor's claim under Illinois law of an exemption from Chapter 7 bankruptcy estate of funds withdrawn from the debtor's IRA and then re-deposited within 60 days is overruled). However, inherited IRA's are not protected.

Naming a trust as the beneficiary of an individual retirement account can enable the IRA owner to control the rate of distributions so as to prevent the beneficiaries from prematurely "cashing out" the IRA and losing the deferral and tax benefits of a "stretch" IRA. Original account owners will want to guard against the potential situation where the IRA distribution is taxed as ordinary income, so the lower capital gain rates do not apply and the distribution may potentially push the beneficiary into a higher income bracket, increasing the income tax owed. Trusts can also provide a layer of protection against creditors in bankruptcy, asset protection in disability or old age, and in the event of a beneficiary's future divorce.

In a second marriage situation, naming a trust as the beneficiary of an IRA can be a way to provide for a surviving spouse for life, using a QTIP trust, achieve income tax deferral over the lifetime of the surviving spouse and to keep the original account owner's retirement assets for the biological children of the account owner.

Using a trust can help guard against the possibility that the children who have not yet reached full retirement age do not simply cash out the IRA, incur and pay the tax, and lose the deferral that would otherwise be available. In this situation, it is important to consider whether to use a conduit or an accumulation trust. A conduit trust is a trust which requires all of the trust income to be distributed annually. It is more likely to be accepted as valid by the federal Internal Revenue Service, but since all of the income must be paid out annually to the beneficiary, if the value of the IRA account is quite large, and/or the surviving spouse is named as the IRA

designated beneficiary and/or if that spouse is relatively young (under 59 ½), using a conduit trust may be a very imperfect choice.

Naming a trust as the beneficiary of an IRA also makes sense where the account holder wants to retain a measure of flexibility –name a class of beneficiaries which may be expanding, for example, to include after born grandchildren. You could also name a trust as a beneficiary to provide flexibility for a child's special needs if he or she should continue to be disabled but to distribute the funds outright to the child if the disability is able to be overcome. In this situation, an on/off spigot could be incorporated into the trust document.

Naming a trust as the beneficiary of an IRA may also make sense to facilitate decision – making by a tax and financially saavy individual, where the beneficiary is less sophisticated and may not be able to make the best financial and investment decisions. For instance, if Bilig Banker wants to leave a very large IRA account to his grandchildren, and the generation skipping transfer tax is in effect and the GST would be implicated due to the size of Bilig's estate, then he would be well-served by a trust with GST provisions.

Naming a special needs trust as the beneficiary of a traditional individual retirement account can be an effective strategy in some states where a disabled individual is a Medicaid or Supplemental Security Income recipient and the goal is to preserve eligibility for public benefits while providing for the disabled beneficiary's special needs. Medicaid planning. This strategy can facilitate the disabled beneficiary's continued eligibility for public benefits such as Medicaid, Supplemental Security Income (SSI), Supplemental Nutritional Assistance (SNAP), LIHEAP and Section 8 housing vouchers. These programs are means-based public benefit programs, which are only available to individuals with very low income and assets. Individuals

are expected to expend the resources and income available to them for their care. The general rule for public benefits eligibility is that if a resource is available to be used to pay for care, then it is available and has to be spent down. A special needs trust is a recognized exception to this rule. Having access to these supports and services in the community can enable a severely disabled individual to remain at home and avoid institutionalization in a nursing home or a group home.

Ex. 5. *Sally names her severely disabled daughter, Susie, as the beneficiary of her IRA with an account value at the date of death of over $200,000. Assume Susie is living in my home state of New Jersey, where the Medicaid resource limit is $2,000. That means that if there is one penny over $2,000 in Susie's name, then Susie is disqualified from Medicaid and has to pay for her care. If Susie takes the inherited individual retirement account outright, she now has over $200,000 in Susie's name and she is ineligible for Medicaid. She would have to spend down the entire $200,000 in the individual retirement account to less than $2,000. If Susie is receiving Medicaid and SSI, and the date of death value of the IRA account is $300,000, and if the Medicaid resource threshold in her state is $2,000, then she would have to spend more than $198,000 of the proceeds in order to become eligible for public benefits.*

Note that for there to be a valid special needs trust, the disabled beneficiary of the trust is not able to control the disposition of the assets in the trust. It is the trustee who has the sole, unfettered discretion to determine whether or not to make a distribution to a disabled beneficiary. These types of trusts do not have ascertainable standards, because if they did, then the beneficiary could enforce the right to a distribution from the trust and the income and principal of the trust would then be available to the disabled beneficiary to pay for care, and the attempt at creating a special needs trust would fail.

Of course, before naming a trust as the beneficiary of an IRA, you need to make sure that there is no easier or less risky alternative and that your client has a good reason to name a trust as an IRA beneficiary.

Poor reasons to name a trust as an IRA beneficiary include avoiding probate (IRA's pass outside of probate even without a trust) and in some cases, in order to obtain creditor protection. In _Rousey v. Jacoway_, *544 U.S. 320 (2005)*, the United States Supreme Court held that IRA can be exempted from the bankruptcy estate (and thereby protected from the claims of creditors) because IRAs confer a right to receive payment on account of age and they are similar to plans or contracts within the meaning of § 522 of the Bankruptcy Code. Many (but not all) states laws also provide some creditor protection to IRAs from judgment creditors and liens outside the bankruptcy court. However, inherited IRAs do not fall within the parameters of § 522. *See Clark v. Rameker, 573 U.S. ___ (2014).*

Achieving income tax savings is also a poor reason to name a trust as the beneficiary of an individual retirement account. Income received by a trust is taxable comparatively higher rates than by individuals, because the trusts run up the progressive income tax rate brackets much more quickly thank individuals do. In 2019, the top marginal 37% income tax rate applies after the trust receives more than $12,750 in 2019. (The trust's income tax liability is computed at $3,075.50 plus 37% of income over $12,750.) By contrast, to be taxable at the 37% marginal income tax rate, a single filer would have to have taxable income of $510,300).

A **designated beneficiary** must be an individual, unless the designated beneficiary is a trust which satisfies the look-through rule and if the trust does, the trust can be named as a beneficiary and can be a designated beneficiary under T.R. § 1.401(a)(9)-4 with the deferral period potentially being preserved.

If there is a qualifying designated beneficiary, then the single life tables can be used to determine the life expectancy of the individual designated beneficiary or if there is more than

one qualifying designated beneficiary, the oldest trust designated beneficiary. This is important because if the beneficiary lacks designated beneficiary status, then the deferral period is much shorter.

The look through rules require that a trust must meet the following criteria in order to qualify as a see through or look through trust. First, the trust must be valid under the applicable state law. Second, the trust must be irrevocable by the date of death of the IRA account owner. Third, the trust document must clearly identify the beneficiaries, either by name or by a clearly identifiable class. Fourth, certain documents must be provided to the IRA trustee or custodian by the required date. In addition, all the trust beneficiaries qualify as **designated beneficiaries.**

In order for a trust to be valid under state law, there have to be no unresolved issues as to capacity/undue influence, any applicable state laws have to be met (i.e., rule against perpetuities, statue of frauds), the trust cannot have an illegal purpose (ex. to shelter a fraudulent conveyance from rightful creditors). A testamentary trust should work. There are two situations to watch out for. In the first, you do not want to have IRA funds held in a jointly revocable trust set up by spouses who are both living. There was an instance of spouses who set up a joint revocable trust and the trust was not irrevocable as of the date of death of the first spouse because the other spouse still was living and held the power to revoke the trust. Note that the power to amend the trust (for instance, to comply with the Medicaid rules applicable in your state or with other changes in state or federal law) is not a disqualifying factor as the power to revoke a trust would be.

In the second instance, watch out for spouses in community property states where the surviving spouse holds the power of revocation.

You have to be able to identify all of the beneficiaries of the IRA. What you must consider is who shares in the trust principal or income? Who is the oldest? For a class of beneficiaries capable of expansion, if you can identify the class member having the shortest life expectancy, then the members of the class are identifiable.

The IRA custodian must be provided with a copy of the trust document or a summary of the trust provisions with a final list of all the trust beneficiaries with a description of any conditions precedent to entitlement as of September 30 of the year after the IRA participant's death. T.R. 1.401(a)(9)-4 Q&A-5 and Q&A-6.

Is it possible to create and name separate shares as beneficiaries? Yes, potentially, if your estate plan is structured, funded and administered as discussed in PLR 200537044. This structure is advantageous because it allows each beneficiary's own life expectancy used to compute required minimum distributions, meaning that younger beneficiaries will have greater deferral. In order to do this, separate sub-trusts must be created on the IRA beneficiary designation during the IRA participant's lifetime so that each of the individual sub-trusts are the direct beneficiaries of the IRA, not the master trust.

In PLR 200537044. Decedent/IRA owner, executed his IRA Inheritance trust (the T trust) and a beneficiary designation form naming nine separate trusts (referred to as the D Trust through the M Trust) established under the terms of the T trust as the primary beneficiaries of the IRA. Each of the D through M trusts was allocated a specific percentage of the IRA which allocation corresponded to the percentages allocated to each trust under the provisions of the T trust. The beneficiary designation also provided that "…all above trusts established as separate shares under Trust T trust." Later that year, the decedent amended the T trust and died on

December 3 of the same year, prior to the required beginning date for the minimum distribution requirement. At death, the decedent was unmarried and had no children.

After the decedent's death, the IRA was subdivided by means of trustee-to-trustee transfers into nine IRAs maintained in the name of decedent to benefit the nine named beneficiaries of the IRA. The trust, as modified, required that a separate trust be set up to hold the appropriate portion of the IRA allocated to each trust under his IRA beneficiary designation and under the provisions of the T trust. Under the T trust document, the assets held in each trust, except for the J Trust, are to be distributed to the primary beneficiary of the trust as soon as they are received by the trustee of the trust. Upon distribution to Trust J, assets therein are to be accumulated and added to the principal thereof to benefit potential remaindermen none of whom can be older than J.

The separate trusts created under the provisions of Trust T were the beneficiaries of the decedent's interest in his IRA and the T Trust was not named as the beneficiary of the IRA. Prior to December 31, of the year following the year of the decedent's death, the IRA was divided by a series of trustee-to-trustee transfers into a number of sub-IRA's each of which was set up and maintained in the name of the decedent and each of which was set up to benefit a specific beneficiary of Trust T through the trusts created under the provisions of Trust T. Thus, distributions from the IRA will be made by the sub-IRA's to the trusts created under the provisions of Trust T and the distributions will not be made to Trust T. The decedent directed the trustee of Trust T to divided Trust T into separate trusts at his death and the trustee of Trust T had no discretion in the matter. The decedent specifically named the trusts created under the provision of Trust T as the beneficiaries of the IRA. The decedent through the provisions of Trust T and through his beneficiary designation took action to insure that his IRA did not pass

through Trust T, and that the trustee of Trust T had no part in dividing the IRA among the beneficiaries thereof. Therefore, the rule of T.R § 1.401(a)(9)-5, Q&A-5(c)(1) did not apply and the beneficiaries of one of the trusts created under the provisions of Trust T need not be considered in determining who, if anyone, is the Code section 401(a)(9) designated beneficiary of another such trust. Each trust (D through M but not J) created under the provisions of Trust T qualifies as a see-through trust. To calculate the required minimum distribution requirement, the appropriate measuring life will be the life of the primary beneficiary thereof. To calculate the required minimum distribution with respect to Trust J, the appropriate measuring life will be the life of J, the primary beneficiary. While PLR 200537044 is not binding authority, and cannot be relied upon as such, it is instructive in terms of providing a road map to the drafting and administration of a trust and the creation of separate shares, to maximize deferral for each separate share, based on the life of the primary beneficiary of each separate share.

By contrast, in a more recent ruling, PLR 201924013, the IRS confirmed that the decedent's IRA could be divided into four separate inherited IRA's for each of her three children, but required the measuring life for all of the shares to be the life of the oldest child. The decedent named her irrevocable trust as the beneficiary of her IRA. The decedent died after her required date for her first required minimum distribution (i.e., in the year of turning 70 ½). She was survived by four children. The trust document provided that upon her death, the trust's assets, which included the IRA, would be divided into separate trusts for each of her descendants, per stirpes. The trust identified her four children.

The co-trustees proposed to divide the individual retirement account by means of trustee-to-trustee transfers into four distinct IRA's, each one for the separate benefit of one of the four children. Each transferee IRA would be maintained in the name of the decedent (now deceased)

for the benefit of the trust for each child beneficiary. Distributions from each of these transferee IRA's will be made over the life expectancy of the oldest child of the decedent.

The Service confirmed that each of the IRAs constituted an inherited IRA under IRC §408(d)(3)(C)(ii). The creation of these four IRAs for the benefit of each child beneficiary by means of trustee-to-trustee transfers as provided in Revenue Ruling 78-406 will not be treated as taxable distributions or payments to each child beneficiary, nor will they be considered attempted rollovers of IRA's to each child. The IRS also emphasized that the IRAs created by the trustee-to-trustee transfers shall be set up in the name of the decedent for the benefit of the trust for the benefit of each child beneficiary and may be maintained separately for purposes of determining the required minimum distributions under § IRC 409(a)(9) except with respect to the determination of the measuring life for purposes of calculating the applicable distribution period. The minimum distribution requirement may be met by distributing amounts annually from each distinct IRA, computed using the life expectancy of the oldest child using the Single Life Expectancy Table provided at § 1.401(a)(9)-9, Q&A-1, beginning with the calendar year of the year following the year of the decedent's death, reduced by one for each subsequent calendar year under T.R § 1.401(a)(9)-5, Q&A-5(c)(1).