

**FUNDING AN SNT
WITH TAX DEFERRED ASSETS**
(Including some really useful tricks)



Robert A. Mason, CELA, CAP*

CHARLOTTE and ASHEBORO, NORTH CAROLINA

www.masonlawpc.com

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* NAELA Council of Advanced Practitioners; Fellow, American College of Trust and Estate Counsel

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Attachment A -- A Pre-TEFRA Annuity in 2025!

TRANSFERRING TAX DEFERRED ASSETS (OFTEN TO TRUSTS)

I. INTRODUCTION

Some of the trickiest Medicaid planning issues involve tax deferred assets. By “tax deferred” I am referring to annuities and individual retirement accounts. The problem is that in many (if not most) cases a transfer of the asset will trigger taxation, which presents an obstacle if a desirable transfer would be to some sort of asset protection trust. But there are exceptions. Understanding those exceptions can provide you with very useful tools to serve your clients.

Many good estate planning and elder law attorneys approach the topics of annuities and IRAs with the deepest of dread. Further, many (too many) attorneys have only a rudimentary understanding of the practical and tax aspects of annuities, and as a result, are missing out on some significant planning opportunities. A good grasp of the rules is also useful for surmounting the inevitable pushback from financial institutions and advisors who will insist that “you can’t do that.” Hopefully, this outline will dispel some of the mystery and instill some thought. To paraphrase Albert Einstein, if you want to play better than anyone else, you must first learn the rules.¹

The first section of this outline examines rules applicable to nonqualified annuities (as opposed to annuities held in individual retirement accounts). As you will see, a nonqualified annuity is nevertheless a tax deferral mechanism. Knowing how to transfer an annuity to a trust without triggering taxation can be useful.

The second section will examine transferring an inherited IRA to a trust under 42 U.S.C. § 1396p(d)(4)(A). The rest of this outline will refer to a self-settled trust under that section as a “D4A Trust.”

The last two sections stray off from funding a trust, but because annuities and trusts share some common characteristics, an annuity can provide “trust-like” benefits. Accordingly, the third section will look at Medicaid treatment of annuities so that the last section will make some sense. Finally, the last section will discuss annuities held in individual retirement accounts (or annuitized individual retirement accounts). Each section will offer some (I hope) useful, perhaps even intriguing, planning tips.

II. NONQUALIFIED ANNUITIES

A. Background

Elder law attorneys involved in Medicaid and asset protection planning must routinely deal with annuities. In that context, understanding the tax rules applicable to “cashing in” or transferring (including to a trust) an annuity is important.

¹ Most sources have the quote, “You have to learn the rules of the game. And then you have to play better than anyone else.” Whatever.

First, a bit of background (or nothing else will make sense).

1. Annuities generally

An annuity contract binds an insurance company to provide a payment or stream of payments in exchange for a single premium or perhaps a series of premiums. As I tell my clients, an annuity is nothing more than a loan to the insurance company in which it is promising to pay you back with interest in some form or fashion.² In fact, an annuity stream is likely to be taxed in a manner similar to that of a loan: A portion will represent a tax-free return of loan principal and a portion will be a taxable payment of interest.

The rules of Section 72 of the Internal Revenue Code of 1986 (“I.R.C.”) and regulations thereunder generally govern annuities. Over the years Congress designed the rules to encourage retirement savings and discourage the use of annuities for various nefarious tax-shifting purposes. Because the rules have many of the same policy goals as qualified retirement plans under the Employee Retirement Income Security Act of 1974 (“ERISA”), they can bear a striking resemblance to each other, particularly the distribution rules of I.R.C. § 401(a)(9). Someone familiar with the ERISA rules should have an easy time understanding the rather opaque annuity rules of I.R.C. § 72.³

2. The Parties

a. *Holder*. The owner of the contract is the individual who purchased the annuity, makes decisions about various design elements, and can often make other changes (such as ownership, the identity of the annuitant, and so forth). I.R.C. § 72 refers to this individual (who need not be a human being) as the “holder” without defining the term.

b. *Annuitant*. Strictly speaking, the annuitant is the human being whose life is the measuring component of an annuitized annuity (whether the annuitized stream is for a life, or life with a period certain, or some other variation). Often (if not usually) the holder and the annuitant are the same person. Because of this, many use the terms interchangeably, which doesn’t do much when clarity is needed.⁴ Because this Outline deals with trusts, I will take a strict approach to using the terms. A trust might be a holder or a beneficiary, but it will never be an annuitant (trusts don’t die, they terminate).

² Yes, you may borrow that description.

³ I started practice decades ago 30 floors up from Atlanta’s Five Points (downtown) as an ERISA lawyer for a large law firm. While the experience scarred me for life, and I eventually fled for the gentler climes of Savannah, and later to the Old North State, the knowledge has come in handy over the years.

⁴ See, e.g., I.R.C. § 72(b)(3)(A) (referring to an annuitant as an individual allowed a deduction for year of death if all of investment in contract not recovered) or 42 U.S.C. § 1396p(c)(1)(G) (in Medicaid annuity context, the person who bought the annuity).

c. *Beneficiary*. The individual who has a right to any death benefit under the contract upon the death of either the holder or the annuitant. As we will see further below, the death of the holder is what will trigger the payment of whatever annuity benefit is offered under the contract unless the holder is a trust, in which case the death of the primary annuitant triggers the benefit flow.

A useful analogy (not perfect, but close) is a life insurance contract. An owner (holder) can own a policy on the life of another person (annuitant) that will pay on the death of that person to another individual (beneficiary).

3. Classification

a. Annuities may be classified in a few ways. As mentioned above, an annuity may be qualified or nonqualified depending upon the manner of acquisition. If it was purchased as part of a qualified retirement plan or an individual retirement account, it is “qualified” and the tax rules of ERISA apply. If it was purchased with “after tax” money the annuity is “nonqualified” and the rules of I.R.C. § 72 apply. Qualified annuities are discussed in Sections IV and V.

b. An annuity may be immediate or deferred, depending upon the timing of benefits. An immediate annuity begins paying the annuity stream shortly after purchase; a deferred annuity will begin payments at some future date. If the annuity is a deferred annuity, then there are two phases that may have differing tax rules.

(1) The accumulation phase of a deferred annuity is simply the time that premium payments are held by the issuer (and perhaps experience investment returns).⁵

(2) The distribution phase is when the benefits under a deferred annuity begin to payout to the beneficiary (the “Annuity Start Date” or “ASD”). Any number of design features may trigger the ASD: The death of a holder, making an election, the occurrence of an event, or perhaps the conclusion of a period of time stated in the contract.

B. Tax Rules During Holder’s Life

1. Tax deferral

During both the Owner’s life and the accumulation phase the growth within the annuity is tax deferred, which is the probably the biggest advantage of an annuity.

2. Annuity held by a trust

⁵ Believe me, the insurers are using the premiums held to make much more money than they’ll have to payout over the life of the annuity. Which is why they almost always have early surrender charges.

Congress added I.R.C. § 72(u) in 1986 to prohibit tax deferral for owners who are not “natural persons.”⁶ Fortunately, there is an exception for trusts “acting as an agent for a natural person.”⁷

Certainly, a revocable trust with human beneficiaries would satisfy this provision. The bigger question is the applicability to irrevocable trusts (both grantor and nongrantor). In a string of letter rulings, the Service has approved grantor and nongrantor irrevocable trusts as ‘agents for natural persons.’⁸ We all learned in Income Tax 1L not to rely on letter rulings, but they are certainly indicative of Service thinking and we pay lots of money to keep up with the latest.

Finally, the rules do not apply to non-natural owners if the annuity is an immediate annuity.⁹

3. Income received as an annuity

At the conclusion of the accumulation phase the annuity start date (ASD)¹⁰ (whatever the design trigger may be) will commence the distribution phase.

The taxation of amounts received as an annuity is generally covered by I.R.C. § 72(a), (b), and (c). For the sake of brevity, I will not tease these sections apart, but will attempt to give an overview for those not familiar with annuities (this is my ‘client version’).

Not all amounts received as an annuity are taxable. The first step is to calculate an “exclusion ratio” as of the ASD which will yield a fraction. That fraction of any amount received as an annuity will represent a tax-free return of the “investment in the contract.”¹¹ For our purposes, think of this as total premiums or other consideration paid as of the ASD. That number will represent the numerator of the fraction.

The denominator is the “expected return”¹² on the contract. If you are into actuarial calculations as a hobby, great. If not, call the insurance company.

Example 1: Ann invested \$100,000 for a single premium deferred annuity with an ASD 10 years from the purchase date. It will pay \$1,500 monthly for 120 months. Her

⁶ Real, bleeding people.

⁷ I.R.C. § 72(u)(1) (Flush language).

⁸ See, e.g., Priv. Ltr. Ruls. 9752035 (12/24/1997) (testamentary trust; focused on beneficial ownership), 199905015 (2/5/1999) (irrevocable, nongrantor trust), 199933033 (8/20/1999) (irrevocable, nongrantor trust; trustee with complete settlement/termination authority), 200449016 (12/3/2004) (irrevocable, nongrantor trust), 202031008 (7/31/2020) (life insurance company requested ruling for issuing contracts to both grantor trust and nongrantor trust vehicles f/b/o of sole primary beneficiaries), and 202118002 (5/7/2021) (irrevocable nongrantor trust f/b/o grandchildren).

⁹ I.R.C. § 72(u)(3)(E).

¹⁰ Defined at I.R.C. § 72(c)(4) as the “first day of the first period for which an amount is received as an annuity.”

¹¹ *Id.* § 72(c)(1).

¹² *Id.* § 72(c)(3).

investment in the contract is \$100,000. Her expected return is \$180,000 (\$1,500 x 120). Her exclusion ratio is 5/9. Thus, of every \$1,500 received, \$833.33 will be tax-free and \$666.67 will be ordinary income.

Of course, Ann will simply report the ordinary income on her Form 1040. If a trust is receiving amounts as an annuity, the trust tax rules will apply, depending upon trust status as a grantor or nongrantor trust.

4. Income other than as an annuity – I.R.C. § 72(e)

Different rules apply to amounts received under a contract that are other than part of an annuity stream. I.R.C. § 72(e) sets out the different rules and defines “amounts not received as annuities” as amounts received under a contract that are not subject to other tax provisions of the section (basically subsections I.R.C. § 72(a) through (c)).

Amounts drawn out of an annuity contract before the ASD are “income other than as an annuity.” Special allocations rules apply to force a “last in, first out” or LIFO allocation.¹³ If the cash value of the contract exceeds the investment in the contract, any withdrawal will be classified as ordinary income to the extent it is less than or equal to the difference between cash value and the investment in the contract.¹⁴ To add insult to injury, “cash value” is calculated “without regard to any surrender charges.”

Example 2: Ann paid a single premium of \$100,000 for a single premium deferred annuity with an ASD 10 years from the purchase date as discussed in Example 1, above. However, in year 5 she decided to “dip in” to the annuity to the tune of \$40,000 at a time when the annuity had a cash value of \$130,000 and for that year carried a 4% cash surrender charge. The issuer will distribute \$38,400 (minus the 4% surrender charge) and she will report \$30,000 on her Form 1040 as ordinary income. That was an expensive dip.

Observation: As an elder law attorney I come across these situations quite often in the Medicaid planning context (when it might be necessary to liquidate an annuity prior to the ASD).

5. Gratuitous transfer rules – More I.R.C. § 72(e)

I.R.C. § 72(e)(4)(C)¹⁵ provides, with an exception, that gratuitous transfers of an annuity will result in immediate recognition of any tax deferred gain.¹⁶

¹³ Prior to August 13, 1982 it was “FIFO.” Rules added by Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248 § 265(c)(1), effective for annuities issued on or after August 13, 1982. A client gave me the attached last year. It had been twenty years or more since I had seen a Pre-TEFRA Annuity. See Attachment A (Catch the purchase date: August 1, 1982!).

¹⁴ *Id.* § 72(e)(3).

¹⁵ Added by Tax Reform Act of 1986, Pub. L. No. 99-514 § 1826(b)(3) (“TRA 1986”).

¹⁶ *Id.* § 72(e)(4)(C).

The purpose of the section is to prevent an individual from shifting built-in gains on an annuity contract to another (perhaps more lightly taxed) individual and perhaps stretching the tax deferral of those gains. Think: Shifting and delaying gains.¹⁷

a. Exception: To a spouse

I.R.C. § 72(e)(4)(C)(ii) exempts transfers to a spouse from the gain recognition rule.

b. Exception: To a grantor trust wholly includible in gross estate

A gratuitous transfer to a grantor trust¹⁸ should not trigger recognition, particularly so if the trust would be includible in the transferor's gross estate. Such a transfer simply does not trigger the "gains shifting and delaying" that the subsection polices.

C. Tax Rules at Holder's Death (Force-out Rules)

1. Beneficiary's IRD on annuity gain

The beneficiary of an annuity will continue to be taxed similarly to Holder receiving amounts as an annuity as described above. While I.R.C. § 1014(b)(9) provides that assets included in a decedent's estate will generally receive a step-up in basis; subparagraph (b)(9)(A) specifically removes section 72 annuities from stepped up basis. Rather, the beneficiary is taxed under the income in respect of decedents (IRD) rules.¹⁹ In other words, amounts received by the beneficiary will be treated as ordinary income to the extent such amounts received exceed the deceased Holder's investment in the contract.²⁰ A lump sum received by a beneficiary will be treated in the same fashion as a Holder cashing in an annuity; a beneficiary receiving an annuity stream will be taxed in the same fashion as a Holder. According to the Service, the annuity rules of I.R.C. § 72 simply apply to the beneficiary.²¹

The foregoing pertains to HOW a beneficiary is taxed; the following pertains to the time period over which the beneficiary must receive the benefits. I refer to these as the

¹⁷ The legislative history so provides:

Without these clarifications relating to gratuitous transfers of annuity contracts and changes in primary annuitants, the required distribution rules adopted in the 1984 Act could be avoided easily because they would allow taxpayers to continue tax deferral beyond the life of an individual taxpayer.

Description of the Technical Corrections Act of 1987, Joint Committee on Taxation, 112 (6/15/1987) (commenting on TRA 1986 § 1826(b)(1) and (3).

¹⁸ See Rev. Rul. 85-13, 1985-1 C.B. 184 (Grantor is treated as owner of grantor trust for all income tax purposes). This ruling will be discussed in more detail at section III.C, *infra*.

¹⁹ I.R.C. § 691(a).

²⁰ See Rev. Rul. 2005-30

²¹ *Id.*

annuity “force out” rules. If the annuity was issued after January 18, 1985,²² it must satisfy the “force out” rules discussed below.

2. Holder dies before ASD

- a. General: The annuity must be distributed WITHIN five years after the death of the Holder.²³

3. Holder dies after ASD

- a. General: The annuity must be distributed at least as rapidly as under the method used as of the Holder’s death.²⁴

4. Exceptions (of course!)

- a. Exception: If the spouse of the Holder is the primary beneficiary, then she has a couple of choices.

- (1) If the Holder died before the ASD, she could simply elect to continue the contract (the annuity contract should be carefully reviewed to see what impacts, if any, it would have on guaranteed benefits under the contract).²⁵

- (2) Alternatively, she could elect a lump sum (assuming the contract allows it). She could also elect the “at least as rapidly” rule if the annuity was in payout status.

- (3) And finally, she could elect payout over her life expectancy (discussed immediately below for annuities in payout status).

- b. Exception: If the contract names a “designated beneficiary” then the beneficiary may elect to take distributions over his life expectancy, as long as distributions begin within one year of the Holder’s death.²⁶

BEWARE: I.R.C. § 72(h) provides that if an annuity provides for payment in lump sum, but provides for an annuity payout option, then the annuity payout option must be elected within 60 days after the day the lump sum became payable. Read together, the most conservative reading is that if a beneficiary wishes to elect a life (or shorter) annuity in lieu of a lump sum (a) an election should be made within 60 days of the Holder’s death (b) to receive an annuity stream commencing within one year of the Holder’s death.

²² Deficit Reduction Act of 1984, Pub. L. No. 98-369 § 222(b), added the I.R.C. 72(s) “force out” rules effective for annuities issued on or after January 18, 1985.

²³ I.R.C. § 72(s)(1)(B).

²⁴ *Id.* § 72(s)(1)(A).

²⁵ *Id.* § 72(s)(3).

²⁶ *Id.* § 72(s)(2). The one year rule is strictly construed – no excuses. See Priv. Ltr. Rul. 201532026 (April 23, 2015).

c. Trusts

(1) Trusts don't qualify as a designated beneficiary for purposes of these rules.²⁷ Thus, a trust will necessarily be saddled with the "at least as rapidly" rule or the "five year" rule, depending upon when the Holder died in relation to the ASD. Trusts are often named as beneficiaries in the asset protection and elder law contexts, and a planner will need to explore this loss of deferral versus asset protection concerns with the client.

(2) If a trust is Holder, the primary annuitant is treated as Holder "for purposes of this subsection" (s) of section 72. As should be clear at this point I.R.C. § 72(s) provides the force-out rules "where the holder dies before entire interest is distributed."²⁸ Thus, the death of the primary annuitant of a trust-owned annuity will trigger the force-out rules discussed above in this subsection II.C.

(3) In view of the above, any change of primary annuitant will be treated as death of Holder.²⁹ Recall the general objective of Section 1826 of TRA 1986 to avoid extending tax deferral times and shifting taxation to lower taxed individuals.³⁰

D. Trust Annuity Rules Recap

1. A trust may hold a deferred annuity if acting "as an agent for a natural person." It matters not whether the trust is a revocable, irrevocable, grantor or nongrantor trust if human beings are the beneficiaries.³¹
2. Generally gratuitous transfers of an annuity trigger immediate recognition of income to the transferor. This should not be the case if the transfer is to a grantor trust that would be includible in the transferor's gross estate.³²
3. If a trust is the beneficiary of an annuity, it will receive the annuity benefits under either the "five year" rule (if the Holder died before the ASD) or the "at least as rapidly" rule (if the Holder died after the ASD).³³

²⁷ I.R.C. § 72(s)(2) exceptions apply only to designated beneficiaries with "life expectancies" who are individuals. *See, also, Id.* § 72(s)(4) (definition of "designated beneficiary").

²⁸ Old trusts don't die, they just terminate.

²⁹ I.R.C. § 72(s)(7), added by TRA 1986 § 1826(b)(1).

³⁰ *See* n.15 and n.17.

³¹ *See* n.6 through n.9.

³² Because I said so. *See* n.18.

³³ *See* n.27 and accompanying text at II.C.4.c(1).

4. If a trust is the owner/holder of an annuity, the primary annuitant is treated as the Holder, and the death of the annuitant will trigger the force out rules of I.R.C. § 72(s).³⁴³⁵
5. If a trust owns an annuity, any change in the primary annuitant will trigger immediate taxation.

III. TRANSFERRING AN INHERITED IRA

Occasionally, due to poor or no planning, a disabled individual will inherit assets that jeopardize continued qualification for Medicaid or SSI. In that situation, Congress provided an exemption from the general rule that self-settled trusts will be countable to the beneficiary if there are any circumstances in which a distribution could be made to the beneficiary. That relief, of course, are the exemptions provided under 42 U.S.C. § 1396p(d)(4)(A)-(C). Of interest to this outline is the self-settled/payback trust provided under paragraph (A) (the D4A Trust exemption).

A. D4A Trust Recap

As long as one of the correct parties established the trust, the trust is solely for the benefit of the beneficiary during the beneficiary's life, and the trust contains a provision to "pay back" Medicaid from any assets remaining upon the beneficiary's death, funding the D4A Trust will not be a sanctionable transfer³⁶ and the assets will not be treated as countable assets for continued benefit eligibility.³⁷ The distribution standard for a D4A Trust will grant the trustee discretionary authority to make a wide array of distributions to or for the benefit of the beneficiary as long as the distributions do not supplant, but rather supplement, public benefits.

B. D4A Trust Tax Status

A D4A Trust will be a grantor trust for income tax purposes. I.R.C. § 671 says that where it is specified (in later sections) that a grantor is treated as an owner of a portion of the trust, all items of income, deductions, and credit attributable to that portion will be included in computing the grantor's taxable income.³⁸

I.R.C. § 673(a) provides that a grantor will be treated as owner of any portion of the trust over which the grantor has a reversionary interest exceeding five percent of the trust value at its inception. I.R.C. § 673(c) says to assume the trustee will exercise maximum discretion in making distributions. Although I am not a math whiz, given that a D4A Trust trustee has full discretion in making distributions, subject only to not disqualifying the beneficiary from

³⁴ See II.C.4.c(2).

³⁵ See n.29 and accompanying text.

³⁶ 42 U.S.C. § 1396p(c)(2)(B)(iv).

³⁷ *Id.* § (d)(4)(A).

³⁸ Treas. Reg. § 1.671-3(a)(1) clarifies that if the grantor is treated as the owner of the entire trust, all such items (including capital gains and losses) will be taken into account by the grantor in the same manner "had the trust not been in existence during the period he is treated as the owner."

Medicaid or SSI, it seems that 100% of the trust will be considered owned by the grantor/beneficiary.

I.R.C. § 677(a) further provides that the grantor will be treated as the owner of the trust if income of the trust could be distributed to the beneficiary within the discretion of the beneficiary or a nonadverse party (and without the consent of an adverse party). If the trustee is not an adverse party (namely, not a remainder beneficiary with respect to anything left after the state has subjected the trust to its tender ministrations), the trust will be a grantor trust.

C. Revenue Ruling 85-13

Taking pity on those who had a difficult time understanding I.R.C. § 671 and Treas. Reg. § 1.671-3(a)(1), as well as the fact that they vehemently disagreed with the Second Circuit Court of Appeals in *Rothstein v. United States*³⁹, the Service issued Revenue Ruling 85-13.⁴⁰

With respect to *Rothstein*, for reasons that are irrelevant here, both the Service and the court agreed that the tax attributes of the trust in question should be included in determining the grantor's tax liabilities. The court, however, determined that while the grantor in the case at hand was to include the tax attributes of the trust in his tax calculations the trust would continue to exist as a separate taxpayer. The court reasoned, that there could be times when the results could be different between the taxpayer and the trust.

In the revenue ruling, the Service ruled that under I.R.C. § 671 and Treas. Reg. § 1.671-3(a)(1), the trust would be treated as if it simply did not exist. This is an important point I will return to.

D. The Inherited IRA

IRAs are inherited routinely. And just as routinely, the minimum required distributions of the IRA can be calculated as a function of the beneficiary's age. Trusts benefitting solely a designated beneficiary or an eligible designated beneficiary are also routinely named as beneficiaries of an IRA by the owner of the IRA to take effect on the owner's death. Further, those trusts may also calculate minimum distributions using the beneficiary's age, and may even accumulate those distributions within the trust for certain classes of eligible designated beneficiaries (*e.g.*, minors and disabled beneficiaries). This Outline will NOT be a recap of the SECURE Act and SECURE 2.0 Act rules which are treated exhaustively elsewhere.

But what of the disabled or minor beneficiary who directly inherits an IRA from a now deceased individual, perhaps due to poor (or no) planning? Generally, I.R.C. § 691(a)(1)

³⁹ 735 F.2d. 704 (2d. Cir. 1985).

⁴⁰ 1985-1 C.B. 184, 1985 I.R.B. 28.

classifies an inherited IRA as income in respect of a decedent and thus taxed as ordinary income in the year the distributions are received. I.R.C. § 691(a)(2), however, subjects the entire value of the IRA to immediate taxation to the beneficiary if the beneficiary transfers the IRA.

This creates a dilemma, particularly for the disabled beneficiary receiving Medicaid or SSI benefits. If she retains the IRA, she will likely lose public benefits until the IRA has been spent down. If she cashes in the IRA to fund a D4A Trust, the cash-in will be subject to immediate taxation. The tax uncertainty is that if she does transfer the IRA to a D4A Trust, will it trigger taxation under I.R.C. § 691(a)(2)?

1. *The letter rulings.* As noted above,⁴¹ the only individual who may rely on a private letter ruling from the Service is the taxpayer who requested the ruling after paying a small fortune in attorneys' fees and fees to the Service. If that is so, why do we subscribe to myriad services to stay informed as to the latest letter rulings? Because they give us some insight into how the Service will view certain tax issues and guidance with regard to structuring transactions (or evaluating the risks of following a certain course of action).

The Service has issued three letter rulings pertaining to the transfer of inherited IRAs to grantor trusts. Two involved disabled beneficiaries and one a minor beneficiary.

PLR 2006-20025 and PLR 2011-16005 both involved IRAs inherited by disabled beneficiaries and the proposed transfers of the IRAs to D4A Trusts. PLR 2006-20025 reasoned that under I.R.C. § 677(a) the D4A Trust was a grantor trust with respect to the beneficiary. There then follows a discussion of Revenue Ruling 85-13, and I.R.C. § 691(a)(1)-(2). The ruling concludes that because the transfer was to a grantor trust, the transfer was not a "sale or disposition" within the meaning of I.R.C. § 691(a)(2). Five years later PLR 2011-16005 made the same ruling with language that tracked the earlier ruling.

PLR 2008-26008 is interesting because the beneficiary was not disabled. Simply a minor. The trust was an irrevocable discretionary trust solely for the benefit of the minor, with mandatory distributions upon the attainment of certain ages. The Service applied the same reasoning it used in PLR 2006-20025.

2. *So What?* I have used this strategy and saved the day for my clients (and by accident the remainder beneficiaries of the D4A Trust).

I'll call him "Dave." Dave was a fellow in his late 40s who had been drawing Medicaid for many years and had been in and out of facilities over the years (mostly due to drug and alcohol problems). Dave was an only child and his much older parents had large IRAs (around \$1 million in each). He had no other family and very few friends except two old friends from high school (one an attorney and one a CPA) who looked after him and tried to

⁴¹ See subsection II.B.2

keep him out of trouble.

Mom and Dad died within months of each other, and, of course, Dave inherited the IRAs. Recalling the rulings discussed above, I reasoned that there was not much to lose if the transfer to a D4A Trust did not work out and the Service decided to reverse its earlier rulings. The attorney and the CPA agreed. I met with Dave on multiple occasions (alone) and he insisted on naming his friends the remainder beneficiaries.⁴² We set-up a D4A Trust. An employee of the custodian of the IRA (an individual employed by a large entity we have all heard of) refused to participate (On the telephone, I could not tell if the representative was choking or guffawing). I embarked on what seemed a futile quest. Then a thoughtful colleague suggested: Peak Trust!

Peak Trust Company has offices in Anchorage and Las Vegas. They have a great and helpful staff (including a number named “Blattmachr” who I suspect are related). We worked it out successfully. They are a great resource, particularly if you have trouble finding anyone who will think creatively.

The Rest of the Story: Dave died after a little more than a year, having spent the last six months in a facility. I asked estate recovery for an itemized statement as he had been on Medicaid most of his adult life. The estate recovery people could only account for about two years of benefits. Needless to say, I was shocked (as were they and the beneficiaries). For some reason, the attorney and CPA have become good referral sources.

IV. MEDICAID, AN INDIVIDUAL’S IRA, AND ANNUITIES

A. The Individual’s IRA

I know, I know . . . the Conference billed this session as pertaining to funding TRUSTS with tax deferred assets. I am going off script.

The discussion above focused on transferring an inherited IRA to trust, because there is some support for that. There is NO support for an IRA owner transferring to a D4A Trust. I believe, theoretically, it could be done, especially given that Revenue Ruling 85-13 says, “Because A is treated as the owner of the entire trust, A is considered to be the owner of the trust assets for federal income tax purposes.” If that is not clear enough, it goes on to say, “section 671 requires that the grantor includes in computing the grantor’s tax liability all items of income, deduction, and credit of the trust as though the trust were not in existence” (emphasis added).

I puzzled over that for some time until it occurred to me that perhaps a D4A Trust would be an inferior approach, particularly if there is a community spouse. A D4A Trust has a mandatory payback feature. The annuity rules are much friendlier to a spouse (as will be discussed), and if there is no spouse, one can accomplish much the same with an annuity

⁴² Tearfully, he said, “They’re all I got!”

that could be accomplished with a D4A Trust.⁴³

Further, the Medicaid rules tend to conflate annuities and trusts. “The term ‘trust’ includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.”⁴⁴ Transmittal 64 fleshes this out.⁴⁵

By annuitizing an IRA for an institutionalized spouse or an individual with a disabled child, I have obtained excellent results. As will be discussed, you will have to “run the numbers.”

B. Countability Rules

To state the obvious, an annuity is an asset. In the Medicaid context, an asset is either countable or noncountable for purposes of meeting the resource limits. If it is noncountable, the next step is to determine whether actions were taken in the process of creating the noncountable asset that warrant the imposition of a transfer sanction.

Generally, the asset rules applicable in Medicaid can be no more restrictive than those applicable under the Supplemental Security Income (“SSI”) program.⁴⁶ SSI considers an asset as a resource for means-tested eligibility purposes if the applicant or spouse owns the asset, has the ability to convert it to cash, and is not restricted from using it for support or maintenance (unless, of course, the asset is specifically exempted under the rules).⁴⁷ There is no detailed exemption for an annuity under the SSI rules; it is either available because it can be cashed-in or sold or it is not because the owner is “stuck with it.” Under the Medicaid rules this translates into an examination of whether an annuity is irrevocable and nonassignable.⁴⁸ Or, as I explain to my clients, “You can’t change it, sell it, or give it away.” Of course, the resulting income stream is countable income to the annuitant.

The rules are much more detailed, however, with respect to whether purchasing or altering an annuity that is noncountable should be subject to a transfer sanction.

C. Transfer Rules Applicable to Annuities

1. The Deficit Reduction Act of 2005 imposed the current annuity rules under 42 U.S.C. § 1396p(c)(1)(F) and (G). Subsection (c) of the section is the federal statutory source of

⁴³ Other than generating an income stream, which could present issues that a D4A Trust would avoid by accumulating income.

⁴⁴ 42 U.S.C. § 1396p(d)(6).

⁴⁵ The Health Care Financing Administration (“HCFA”) was the predecessor to the current Centers for Medicare and Medicaid Services (“CMS”). Transmittal 64 added §§ 3257-3259 of Chap. 3 of the CMS State Medicaid Manual. The State Medicaid Manual (hereinafter “SMM”) is available online at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html>. Better yet, simply search online using “CMS State Medicaid Manual.” Transmittal 64 was (and remains) HCFA’s explanation to State Medicaid officials of the trust provisions of OBRA ’93.

⁴⁶ 42 U.S.C. § 1396a(a)(10).

⁴⁷ See Program Operations Manual System (POMS) SI 01110.100 B.

⁴⁸ See, e.g., North Carolina Adult Medicaid Manual (MA) 2230 XII. E.2.

the Medicaid transfer rules. Paragraph (1) of subsection (c) gives us the transfer of assets rules we have all come to love. Paragraph (2) gives us the exceptions.

Subparagraph (F) of paragraph (c)(1) specifies that the state must be named as the primary remainder beneficiary of the annuity to the extent of Medicaid benefits paid. Importantly, the state may be moved behind a spouse, a minor child, or a disabled child.

TIP: When structuring an annuity in a planning context for a widowed or divorced applicant, do not overlook a disabled child of any age when naming a remainder beneficiary. This will be discussed much more below.

Paragraph (G) provides that the purchase of an annuity will be treated as a transfer of assets unless

- a. The annuity is an individual retirement annuity (translation: an annuity that is structured to meet the general requirements applicable to individual retirement accounts under I.R.C. § 408).

OR

- b. The annuity was purchased with the proceeds of either a Roth or traditional IRA (a subtle difference from a. above – the IRA has invested in an annuity).

OR

- c. The annuity is irrevocable and nonassignable, the annuity is actuarially sound, and the annuity provides for equal periodic payments.

North Carolina (where I practice) follows the federal statute precisely at MA-2240 IX A.2.b.⁴⁹ In fact, the North Carolina manual follows my formatting in emphasizing “OR” (which is often overlooked). Your state likely has something similar.

2. Most practitioners focus on using an annuity to shelter excess cash for the benefit of a community spouse by purchasing a short-term annuity or implementing so-called “half-a-loaf” planning to shelter a portion of a single Medicaid applicants cash. In doing so, the focus is on the annuity rules outlined above at section IV.C.1.c. Both the federal statute and the MA section impose the actuarial standard by requiring the annuity to completely pay-out within the annuitant’s actuarial life expectancy as determined under Social Security Administration tables. Often that is meaningless because the term of the annuity purchased from a Medicaid compliant annuity vendor is going to be very short term and well within the annuitant’s Social Security life expectancy.

Most attorneys do not appreciate the word “OR”! The Social Security actuarial standards apply ONLY to annuities described in paragraph IV.C.1.c., above. The other two

⁴⁹ This is what a citation to the North Carolina Adult Medicaid Manual looks like.

overlooked exceptions (paragraphs a. and b., above) assume that in the qualified plan (*i.e.*, IRA) context the individual will have to comply with the various tax rules, including maximum payout periods.⁵⁰

As will be discussed further below, planning opportunities open because the life expectancy tables used in the qualified plan context are much more generous than the Social Security tables. Before implementing those strategies, you will need to have a basic understanding of the applicable tax rules.

V. ANNUITIZED IRAs

Background for those who do not speak ERISA: There are two broad categories of qualified retirement plans. One of those consists of various sorts of individual account plans such as 401(k) plans, profit sharing plans, and individual retirement plans. These are referred to as defined contribution (DC) plans. Another feature of DC plans is that the investment risk with respect to the funds in the plan rests squarely with the participant.⁵¹ Likely every one of the hundreds of SECURE Act lectures you have listened to over the past couple of years have focused on defined contribution plans.⁵² Set all of that aside, because we are going to the land of defined benefit plans.

Defined benefit (DB) plans are those plans that generally do not consist of individual accounts, but rather commence a benefit stream upon some event (likely retirement) and will be calculated by factors such as years of service, income levels, and so forth. These are also commonly called pension plans. A feature of DB plans is that once the benefit level and payout period are set, the investment risk rests entirely on the employer, employer sponsored qualified trust fund, or the insurance company. Sounds like an annuity?

DB plans have a different set of distribution rules than DC plans. When an individual retirement account invests in an annuity or is converted to an individual retirement annuity the common DC rules no longer apply, and the DB rules take over.

A. DB Rules Applicable to Annuities

Understanding both the DB rules applicable to an annuitized IRA and the Medicaid rules applicable to annuities can open some very interesting planning opportunities. Notably, annuitizing and rendering a Medicaid applicant's otherwise countable IRA a noncountable asset might be an attractive alternative to simply cashing it in and taking the tax hit, particularly if the applicant has a shortened life expectancy and has a spouse or a disabled child (of any age). The cost to this approach is that the resulting annuity stream will be income and could very well become part of the applicant's patient monthly liability payable

⁵⁰ In effect, 42 § U.S.C. 1396p(c)(1)(G) is saying, "If it's OK with the IRS, it's OK with us."

⁵¹ The terms "participant," "employee," "owner" are used interchangeably. Because the focus here will be on IRAs, I will use the term "owner."

⁵² Ten year payout, eligible designated beneficiaries, multi-beneficiary trusts. Sound familiar?

to the SNF under the Medicaid rules. On the other hand, if the community spouse is much younger and has years before a required beginning date and can roll the applicant's IRA as a lump sum into his or her IRA, the years that the inherited amount can grow on a tax-deferred basis might more than make up for the amount that had been paid to the nursing home while the applicant was alive. The attorney's job (perhaps with assistance from a financial advisor) is to weigh the costs and benefits.

This outline covers DB distribution rules on a basic level and only those rules that apply to annuitized IRAs in a Medicaid context.

1. Required Beginning Date (RBD). For owners born on or after January 1, 1951 (*i.e.*, attained age 72 on or after January 1, 2023) the RBD is April 1 following attainment of age 73.⁵³ For owners born on or after January 1, 1959 (*i.e.*, attained age 74 on or after January 1, 2033) the RBD is April 1 following attainment of age 75.
2. Annuity Start Date (ASD). The date annuity payments commence (which must be no later than the RBD).
3. Permissible forms of annuity.⁵⁴
 - a. Straight annuity on the owner's life. Maximizes payments and no beneficiary. Not attractive in the Medicaid context.
 - b. An annuity calculated on the joint lives of the owner and a spouse. The joint life calculation will yield a longer payout, and thus lower monthly payments. When combined with a lump sum distribution to spouse option on death of owner, this option can be attractive. Recall, under the Medicaid rules, a spouse can be listed as a remainder beneficiary ahead of the state.
 - c. An annuity for the joint lives of the owner and a nonspouse beneficiary. Recall also, that under the Medicaid rules, a disabled child of any age can be slotted in ahead of the state as a remainder beneficiary.

If the survivor is more than 10 years younger than the owner, the survivor's annuity must not exceed a percentage of the owner's annuity, as determined in a chart provided in the regulations. For example, if the owner is 74 on the ASD and the survivor beneficiary is a child aged 45, then the age difference is 29 years. Looking in column 1 of the chart (see citation below) for "29" the number "61" appears. That means that at the owner's death, the survivor's annuity could be no more than 61%

⁵³ I.R.C. § 401(a)(9)(C)(v). Consolidated Appropriations Act, 2023, Division T SECURE 2.0 Act of 2022

⁵⁴ See Treas. Reg. § 1.401(a)(9)-6 A-1, A-2; these have been carried forward into the proposed regulations at Prop. Reg. § 1.401(a)(9)-6(b).

of what the owner was receiving.⁵⁵ For example, if the owner was receiving \$1,100 monthly, the survivor could receive no more than \$671 monthly.

d. A period certain annuity. I will not discuss that here because it is not particularly useful in the Medicaid context.

4. Calculating the annuity payments.

When calculating an annuity stream based on a single life or joint lives, the life tables issued for such purposes by the Service are used, NOT the Social Security Administration life expectancy tables. Annuity payout periods may not exceed the “period certain annuity” limitations.⁵⁶ The limitation (in years) cannot exceed the denominator that would be used if the plan was a DC plan. In other words, the DB rules “borrow” the life tables used for calculating MRDs for traditional (non-annuitized) IRAs.⁵⁷

For example, the appropriate table for use if the owner and spouse are within 10 years of each other in age, or the spouse is not the sole beneficiary, or the owner is unmarried is the Uniform Lifetime Table. For a 72 year-old, the table assigns a distribution period of 27.4 years. That would be the maximum term of the owner’s annuity. On the other hand, if the spouse is more than 10 years younger and is the sole beneficiary, then Joint Life and Last Survivor Expectancy table may be used. If spouse is, say, 60 years old, the distribution period extends to 28.8 years. Compare this to the current SSA Period Life Table that assigns a life expectancy of 12.3 years to a 72 year-old male and 14.36 years to a 72 year-old female.

5. Death benefit options.

a. Nonspouse beneficiary. Leave the annuity as structured and continue receiving the annuity stream, or take a lump sum cashout (which would be taxable) as long as the cashout does not exceed the amount initially annuitized.⁵⁸

b. Spouse beneficiary. Same as above for nonspouse beneficiary. However, the spouse also has the option of rolling the lump sum cashout amount into her own IRA.⁵⁹

B. The Institutional Spouse’s Annuity

Dealing with the IRA of an institutionalized spouse (“IS”) presents thorny planning issues. Most states count an IRA owned by the IS. There are just three options for addressing the IS IRA.

⁵⁵ Treas. Reg. § 1.401(a)(9)-6 A-2(c); Prop. Reg. § 1.401(a)(9)-6(b)(2)(iii).

⁵⁶ Treas. Reg. § 1.401(a)(9)-6 A-3(a); Prop. Reg. § 1.401(a)(9)-6(c)(1).

⁵⁷ *Id.*

⁵⁸ Treas. Reg. § 1.401(a)(9)-6, A-14(a)(5); Prop. Reg. § 1.401(a)(9)(o)(1)(v).

⁵⁹ I.R.C. § 402(c)(9); Treas. Reg. § 1.402(c)-2 A-12; Prop. Reg. § 1.402(c)-2(j).

One is to cash it in and take the tax hit. The costs of a skilled nursing facility at \$12,000 a month will often quickly exceed the pain of writing a check to the IRS.

Another option is to annuitize the IS IRA using the Uniform Life Tables under Treasury Regulations and taking a much longer stretch than that afforded under the Social Security Administration actuarial tables. As will be discussed, the income stream will be the IS's income and either be awarded as the community spouse ("CS") MMMNA⁶⁰ or go to the nursing home as the IS monthly payment liability. While the value of that annuity stream will be lost during the IS's lifetime to the extent it is not awarded as MMMNA, the CS will have the option to take a lump sum spousal rollover. Further, the annuity stream will spread the tax pain out and at lower marginal rates; in fact, the payments may generate a tax deduction. This is the planning option I will first explore before considering a cashout.

The final option is using the so-called "Name on the Check" technique. The following section discusses my concerns regarding this technique.

1. Name on the Check Technique

A popular technique to avoid the tax burden of cashing in the institutionalized spouse's IRA and to maximize Medicaid benefits by maintaining a lower income level is the so-called "Name on the Check" strategy ("NOC"). The approach is to annuitize the IS's IRA under 42 U.S.C. § 1396p(c)(1)(F)-(G) to render it noncountable, but to irrevocably assign the annuity stream to the community spouse.

While widely used and creative, I believe the strategy poses some significant risks. I have never used it for the reasons below. For an interesting back and forth on the topic see the *NAELA Journal* issues of Spring and Fall 2020.⁶¹ I generally agree with the Landsman-English approach, but take a slightly different approach by adding a couple of additional considerations.

The fact that many have successfully used the NOC strategy does not necessarily mean no one will ever be caught. Your clients will be furious if they are caught with full taxation of the IRA (plus penalties and interest) while that same vehicle is tied up in an irrevocable (and very illiquid) annuity. At the very least, advise them of the risks.⁶²

2. Medicaid Concerns

The treatment of a married couple's income for Medicaid planning can present planning challenges. Very briefly, the rules provide that the starting point is to treat the income

⁶⁰ *Id.* § 1395r-(b)-5(d)(3). The "minimum monthly maintenance needs allowance" or "MMMNA."

⁶¹ Dale M. Krause & Scott M. Engstrom, Fixing the Leak: Avoiding IRA Liquidation in Crisis Medicaid Planning, 16 *NAELA J.* 35 (2020) ("Fixing the Leak") (Pro) and Ron M. Landsman & David English, Commentary on Fixing the Leak, 16 *NAELA J.* 131 (Con).

⁶² A technique commonly referred to by the acronym "CYA."

of each spouse separately.⁶³ From this point, if the community spouse has income below certain thresholds, an allowance may be made out of the institutionalized spouse's income to raise the community spouse's income to a higher maintenance level.

The community spouse may have an unlimited amount of income, and the only negative to such a development is ineligibility for the MMMNA. The institutionalized spouse will have an income cap that varies from state to state, but it is usually pegged to the particular facility's Medicaid reimbursement rate.

While determining which spouse to attribute income to is often a straightforward proposition, rules exist for assigning income in less than clear situations. Subsection (d)(2)(A) provides rules for income generated by "Non-trust property." 42 U.S.C. § 1395r-5(d)(2)(A)(i) is the source of the "name on the check rule" and says that "if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse." Other rules under the subsection parse through situations involving multiple payees (irrelevant here). Note: This subsection, by its very title, applies to non-trust property.

Subsection (d)(2)(B), on the other hand, pertains to income generated by "Trust property." Individual retirement annuities will be considered "trust property" by Medicaid⁶⁴ within the meaning of the statute. Subsection (d)(2)(B)(ii) says (emphasis mine):

[I]ncome shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse[.]

The "trust" (*i.e.*, the IRA) is not silent. All attributes of the IRA belong to the individual owner (the IS) during his or her life. My biggest concern, from a Medicaid standpoint, is that the NOC technique is attempting to apply the name on the check rule of 42 U.S.C. § 1395r-5(b)(A) (non-trust property) to 42 U.S.C. § 1395r-5(b)(B) (trust property, *i.e.*, annuities).

3. Tax Considerations

Simple. An individual retirement annuity must be nontransferable.⁶⁵ Further, the annuity must be "for the exclusive benefit of the individual in whose name it is

⁶³ See 42 U.S.C. § 1395r-5(b).

⁶⁴ See, *e.g.*, *Id.* § 1395p(d)(6)

⁶⁵ I.R.C. § 408(b)(1).

purchased or for his beneficiaries.”⁶⁶ In the context of ERISA and IRAs “beneficiaries” refers to remainder beneficiaries upon the death of the individual owner or participant.⁶⁷

C. Putting It All Together: Planning Scenarios

a. *Scenario 1:* Harry, 72, is headed to Shadey Grove Health and Rehab for a permanent stay. Sally, 60 and very healthy, is Harry’s wife. Harry owns a \$350,000 IRA and has monthly SS retirement benefits of \$2,000. Sally continues to work in accounting and earns \$75,000 annually. Harry’s IRA is the only obstacle to obtaining what would otherwise be a routine Medicaid plan for a married couple.

If Harry cashes in his IRA, Sally estimates tax due (based on her income and Harry’s IRA) at about \$153,000.⁶⁸ The inclusion of the IRA in gross income added about \$135,000 in tax liability, and leaves about \$215,000 in cash to apply to some standard Medicaid planning for a married couple.

If they decide to annuitize the IRA, Sally may be named primary beneficiary ahead of the state. Because Sally is more than 10 years younger than Harry, they can use the Joint Life and Last Survivor Expectancy table and use a denominator of 28.8 to calculate the annuity stream. They plan also to find an annuity provider that will allow a lump sum distribution option at Harry’s death.⁶⁹ Sally plans to roll the eventual final distribution as a lump sum to a traditional DC-type IRA.

Sally estimates that the annuity stream to Harry will be about \$1,000 monthly,⁷⁰ which will be considered income and will be applied to Harry’s PML. But it also may be tax deductible medical expense.⁷¹

Harry dies after 4 years. The present value of the annuity is about \$300,000, which the provider calculates to be the amount available to roll to a new IRA if Sally wishes to avail herself of that option. She does.

Sally is now 64, and is 11 years from her RBD. If her IRA grows at 7% for the next 11 years, the IRA should stand at about \$630,000 on her RBD.

⁶⁶ *Id.* §§ 408(a) & (b)(4).

⁶⁷ *See, e.g.*, Tres. Regs. § 1.408-2(b)(7).

⁶⁸ Please understand these are rough calculations; a financial professional with access to better forecasting tools would probably be more accurate. The scenarios are meant to illustrate the planning idea.

⁶⁹ Many financial advisors may balk at this scenario. Shameless plug: Gerald Applefield, at Barry, Evans, Josephs & Snipes in Charlotte can help you. BEJ&S is an advisory firm catering to the affluent, and Gerald knows more about the insurance industry than anyone else that I know. And, yes, he is Nicki Applefield Engel’s father.

⁷⁰ $\$350,000/28.8 = \$12,153$.

⁷¹ I.R.C. § 213 allows deduction of medical expenses in excess of 7.5% of AGI.

b. *Scenario 2:* Harry and Sally are both 74. Sally's monthly SS retirement benefit is \$1,100.

If they cash in Harry's IRA, it will add about \$95,000 tax liability, leaving \$255,000 cash to apply to some standard Medicaid planning for a married couple.

You then decide to see what the numbers look like if they decide to annuitize the IRA. The denominator in the Uniform Lifetime Table (used when a spouse is beneficiary and there is a less than 10-year age gap in the couple) is 25.5. That will yield a monthly annuity stream of about \$1,100 to Harry. However, you astutely observe that the July 1, 2024 minimum maintenance needs allowance is \$2,555. Because Sally's monthly income is just \$1,100, she will be entitled to an allowance out of Harry's income of \$1,455. The math may be illusory. If they had cashed in the IRA, Harry's PML would have been around \$265.⁷² You are still out the monthly annuity amount of \$1,100.

Harry dies 2 years later at age 76. The cash distribution amount available to Sally is about \$320,000. She rolls it into an IRA. Because she is past her RBD, she will immediately begin MRDs. Upon her death she can leave it to her children, and because you have been to at least 38 SECURE Act seminars addressing standard DC-type IRAs, you will know just what to do.

c. *Scenario 3:* Sally was recently hit by a school bus while checking her mail box. She did not make it. Harry is 74 and still has a \$350,000 IRA. His only child, Sandy, is 45, and drawing Social Security Disability Income (SSDI).

Harry's attorney-in-fact, Sandy, wants to know the options. If the IRA is cashed in the tax liability will be around \$122,000, leaving about \$228,000. This amount could then be gifted to Sandy free from sanctions.⁷³

You could annuitize the IRA and name Sandy as the remainder beneficiary. As in Scenario 2, this will yield an about \$1,100 monthly annuity stream to Harry.⁷⁴ Sandy's survivor benefit, however, would be limited to \$671 for her life due to the 29 year age gap.⁷⁵ Harry dies 3 years later, and the cash out amount is about \$310,000. The tax liability for Sandy would be around \$105,000, leaving about \$205,000 net of taxes.

So, what do you want Sandy? \$228,000 when qualifying Harry for Medicaid? \$205,000 (net of taxes) cash-out at Harry's death? \$671 monthly for the rest of your life. My advice would be to cash in the IRA.

⁷² \$2,000 – \$300 – \$70 – \$1,365 = \$265. \$300? I decided to throw in a Medicare Supplement premium of that amount. The \$70 is the newly established personal needs allowance (MA-2270 V.C.3.).

⁷³ *Id.* (c)(2)(B)(iii); MA-2240 VII.C.

⁷⁴ The Uniform Life Table denominator for a 74 year old is 25.5.

⁷⁵ See my explanation at V.A.3.c on p. 13, above.

ATTACHMENT A –A Pre-TEFRA ANNUITY IN 2025

Contract Details

SINGLE PREMIUM DEFERRED ANNUITY

00009 [REDACTED]

Value As of Date: 10/07/2024

Contract Details	Historical Values
Annuitant: [REDACTED] Product Name: <u>Single Premium Deferred Annuity</u> Annuity Type: Nonqualified Contract Status: In Force Issue Date: 08/01/1982 Current Statement: – Maturity / Income Date : 08/01/2038 56 YEARS! Note: For Maturity/Income Date the contract owner may choose to begin distributions before the indicated date or extend the date to the latest available date in the future. Please contact the Jackson Service Center for additional details regarding how Jackson determines the Maturity/Income Date.	Value As of Date: 10/07/2024 → Values
My Representative	
DANNY [REDACTED] Tel: [REDACTED] Email: [REDACTED]@aol.com	

Additional Details	
Total Deposits: \$5,000.00 Free Withdrawal Amount¹: \$85,302.07 Cash Surrender Value³: \$86,302.07 Average Interest Rate: 5.50%	Accumulated Value: \$86,302.07 Cash Surrender Charge \$0.00 Amount²: Market Value Adjustment: \$0.00 Minimum Guaranteed 5.50% Interest Rate:
1. Free withdrawal amount applies to surrender charge calculations only. 2. Please review your contract for specific details regarding the applicable Surrender Charge and minimum balance requirement to remain active. 3. Free Look Endorsement may apply, please refer to your contract for details.	

Beneficiaries (As of 10/04/2024)

Primary Beneficiaries			Contingent Beneficiaries		
Name	Relationship	Percentage	Name	Relationship	Percentage
[REDACTED]	Spouse	100%	[REDACTED]	Child	50%
			[REDACTED]	Child	50%

Names and Addresses	
Contract Owner	Annuitant
[REDACTED] DR [REDACTED], NC [REDACTED]	[REDACTED] [REDACTED] NC 28673

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Jackson National Life Insurance Company
1 Corporate Way
Lansing, MI 48951