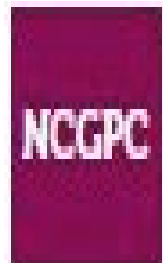


Retirement Plan Distribution to Charities

Jeff Comfort

Vice President,
Principal Gifts and Gift Planning
Oregon State University Foundation



National Capital
Gift Planning Council



the silence of the lambs

Good News!

- **Your organization has been named the primary beneficiary for 100% of your donor's IRA account.**
- **Shortly after the initial notification and providing confirmation that your charity is the correct recipient, another package arrives from the financial institution.**
- **It is a rather thick package (your first warning signal).**

Good News!

- So let's just fill out the forms..
- The IRA administrator asks you to open a **Beneficiary IRA Account (including completing an Inherited IRA Adoption Agreement).**



Good News!

- **Let's start with: First Name, Middle name, Last Name. That's odd.**
- **Oregon State University Foundation entered across the whole space and they can figure out if "State" or "University" is our middle name.**
- **Next: Birthdate. Do I go with 1868? No the Foundation was incorporated in 1947 so let's use that.**
- **This is a Corporate gift, right?**

Good News!

- **Social Security Number**
- **Copy of Drivers License**
- **“That’s OK, a copy of Your Passport will work...”**
- **But...This is a Corporate gift, right?**

Gift-PI Survey

• Your organization has been named the primary beneficiary for 100% of your donor's IRA account. The IRA administrator asks you to open a Beneficiary IRA Account (including completing an Inherited IRA Adoption Agreement). How do you handle this?

Survey Says...80 Replies; 7 Phone Calls

● **Complaints**

- **Forms are Painful**
- **Difficult**
- **Extremely Frustrating**
- **Unnecessary Paperwork**
- **Real Hassle**

Survey Says...80 Replies; 7 Phone Calls

● Compliance

- Complete the forms anyway
- The most cited reasons for completing the paperwork were: “It’s a compliance issue” with several pointing to **The Patriot Act**
- “...if it takes too much effort to convince them to do it a different way, it might be easier to just fill out the forms they want and do it their way – as long as the charity gets a check either way.”

Gift-PI Survey

- *Opening an Inherited IRA account includes being asked to provide the personal social security number and driver's license of staff person. How do you handle this?*

Survey Says...80 Replies; 7 Phone Calls

• **Creative Workarounds**

- **Keep one Inherited IRA account**

- **Provide the University President's Private Information:**

 - (social security # and driver's license...)**

- **Hand the forms to Finance**

Survey Says...80 Replies; 7 Phone Calls

- **Defiance**

- **There's no way on God's green earth that I'd ever divulge my social..."**

- **Acquiescence**

- **"You have zero privacy anyway. Get over it."**

--Scott McNealy; Sun

Survey Says...

- Of the forty responses my personal favorite was: “There’s no way on God’s green earth that I’d ever divulge my social...”
- That view was the exception, though, most noted having provided this information and again, **The Patriot Act** was cited. Two responses shared that they provided the university or foundation president’s or vice-president’s social and driver’s license.

Survey Says...

- **I, too, have heard this many times from financial institutions**
- **When I have questioned their request for my personal information.**
- **Ask: “Can you please give me a specific citation or the language in **The Patriot Act** that justifies your request?”**
- **Cricket**

Inherited IRA

Retirement Dictionary

- **Definition.** Also referred to as '**Beneficiary IRA**'. An **IRA** that is established for the non-spouse **beneficiary** of the **IRA** owner, or qualified plan , 403(b) or 457(b) participant; or a spouse **beneficiary** who chose not elect to treat the **IRA** as his/her '**own IRA**'.
- **Purpose: Tax Collection?**
- **Terms: Lump; 5 year or Stretch RMDs**

The USA PATRIOT Act



“Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001”

- **“...regulations setting forth minimum standards for financial institutions that relate to the identification and verification of any person who applies to open an account.**

The USA PATRIOT Act



Sec. 326. Verification of Identification:

“For U.S. persons a bank must obtain a U.S. taxpayer identification number (e.g., social security number, individual taxpayer identification number, **or employer identification number).”**

Stop. Right. There.

**WRONG
WAY**

GO BACK

Stop. Right. There.

- Put the Inherited IRA forms down and step back.**
- Why are we filling out these forms and haggling over personal information in the first place?**
- We are doing this because the financial institution said we have to in order to receive our gift funds.**
- What is the legal basis for the financial institution to require us to fill out these forms?**

Stop. Right. There.

- **Interesting but Unproductive Path**
 - **Conspiracy or Compliance**
 - **One Tenth of 1% of their IRA Distributions**
- **What is the legal basis for the financial institution to require us to fill out these forms?**

Another Path: The Law

- **IRA is Actually a Trust, the Banker Custodians are Trustees**
- **It makes sense for banker trustees to require an Inherited IRA for individuals.**
- **It does not make sense to require this for charities.**

The Internal Revenue Code

- The **Internal Revenue Code (IRC)** is the statutory basis for the system of taxation in the United States. It spells out the numerous types of taxes people pay and describes accounting practices that can be used in the calculation of taxes. The **Internal Revenue Service (IRS)** is the government agency responsible for enforcing the **Internal Revenue Code**.

The Internal Revenue Code

- **Internal Revenue Code Section 408**
 - **Top of the Pyramid Law written by Congress and signed by the President.**
 - **IRC Section 408 specifically refers to “individual” beneficiaries**

The Internal Revenue Code

- **Internal Revenue Code Section 408**
 - **IRC Section 408 specifically refers to “individual” beneficiaries**
 - **When the IRC Refers to Individuals,**
 - **It specifically Means Human Beings**
 - **A Measurable Life Expectancy**
 - **Purpose: Tax Collection.**

The Internal Revenue Code

- **Internal Revenue Code Section 408**

- IRC Section 408 specifically refers to “individual” beneficiaries

- **As Opposed to “Persons”**

- **Individuals, Partnership, Corporation, Non-profit Corporation, Association, Joint Venture, Private Organization or other Legal Entity.**

The Internal Revenue Code

- **Internal Revenue Code Section 408**
 - IRC Section 408 specifically refers to “individual” beneficiaries
- **Specifically, an Inherited IRA is an IRA Acquired from an Individual Who is not a Spouse.**
- **Only an Individual can Acquire an Inherited IRA**
- **Only an Individual Human Being can Establish an Inherited IRA.**

Strategy

- **What is your Legal Basis for Requiring my Charity to Open this Account?**
- *The assets in the XXX IRA that YYY Financial is holding lawfully belong to the Foundation and we ask for them to be delivered promptly, please. We have provided you with our Foundation name, address and EIN. Please promptly deliver the funds or provide us with you legal basis for withholding them.*

Strategy Steps

- 1) Remember: One Tenth of 1% of their IRA Distributions.**
- 2) Reach the Right Person in the Custodial Firm**
-It is NEVER the first person you talk to on the phone.
- 3) “The Compliance Department,” “Office of Risk Management” or “Legal.”**

Strategy Steps

- 4) IRA is Actually a Trust, the Banker Custodians are Trustees**
- 5) You take the position that an IRA is governed by IRC Section 408**
- 6) IRC Section 408 specifically refers to “individual” beneficiaries: Human Beings with a Measurable Life Expectancy, not Corporations**

Strategy Steps

7) **Expect to be asked to submit your request in writing.**

The assets in the XXX IRA that YYY Financial is holding lawfully belong to the Foundation and we ask for them to be delivered promptly, please. We have provided you with our Foundation name, address and EIN. If YYY will not do this, please provide us with your legal basis for holding these funds and not delivering them to us.

Imagine...

- **Imagine if all, or even most charitable organizations pushed back.**

