

### III. Final Considerations

A. Planning with Retirement Benefits – Self-settled special needs trusts can be used to “stretch-out” distributions from an inherited retirement benefit, such as an individual retirement account (“IRA”), in order to preserve maximum income tax deferral of the inherited retirement benefit. See PLR 200620025. Additionally, third-party supplemental needs trusts can be drafted to receive distributions from retirement benefits over the primary beneficiary’s life expectancy in order to preserve maximum income tax deferral of the inherited retirement benefit. If retirement benefits will be paid to either type of special needs trust and “stretch-out” treatment is desired, special provisions must be included in the trust, which should be drafted as a “qualified accumulation trust”, as opposed to a “conduit trust”, in order to protect the primary beneficiary’s needs-based public benefits. To have an accumulation trust qualify as a “Designated Beneficiary” under the Internal Revenue Code (see § IRC 401(a)(9)(E)) and its corresponding regulations (so that “stretch-out” treatment can be realized), there are restrictions on who may be beneficiaries of the trust. Generally, see Chapter 6 of Natalie Choate’s fantastic book entitled “Life and Death Planning for Retirement Benefits, 7<sup>th</sup> Edition 2011.” Retirement benefit “qualified accumulation trusts” have the advantage of “stretching-out” distributions from the retirement benefit over the primary beneficiary’s life expectancy for the purpose of maximizing the deferral of income taxes, but have the disadvantage of the compressed trust income tax brackets (although a Qualified Disability Trust may be able to provide some relief due to its generous personal exemption).

#### B. Professional Issues with Tax Planning and Return Preparation

1. IRS Circular 230; and
2. IRC § 6694 Preparer Penalties and Notice 2008-13.