

▲ **Minimum Required Distributions**

Assets owned in an individual's retirement accounts (i.e. 401(k) or profit-sharing plan, or an Individual Retirement Account (IRA)) are not subject to current income taxation until the individual starts receiving payments from these accounts. Therefore, in general, the longer the individual can defer payout from these accounts (and the lower the payout amounts) the longer the individual can defer the payment of current income tax. Under federal law, however, once an individual turns age 70 1/2 the individual must start receiving a "minimum required distribution" (MRD) from these accounts by

April 1 of the year following the year the individual participant turns age 70 1/2.

Each year's MRD is determined by dividing the individual participant's prior year account balance by a factor obtained from certain IRS tables. The individual can take out more than the MRD from

these accounts, as there is no upper limit on payout—the government will gladly take its tax dollars early.

Annual MRDs must be paid by December 31 of each year. The Worker, Retiree,

Employer Recovery Act of 2008,

passed in December of 2008, eliminates the requirement of an MRD for 2009. The question is then whether an individual should choose *not* to take an MRD in 2009! The answer to this question would normally be a "no-brainer." Why not defer current income taxation if you do not immediately need the funds? The answer, however, is more complicated. President Obama, in the so called "Green Book" (May 2009), outlines the administration's 2010 fiscal year tax proposals. These provide that the highest marginal income tax rate will increase to 39.6 percent in 2010, from its current lower level of 35 percent. Passage of these proposals is not certain, but very likely. Therefore, deferral of the individual's MRD in 2009 for those taxpayers with incomes subject to the highest marginal income tax rates might not be such a good idea. These individuals might be better off taking their MRD in 2009 (and possibly taking additional payments as well) to avoid paying a higher rate of income tax on future retirement plan payouts.

William S. Forsberg

Leonard, Street and Deinard

Minneapolis

William.Forsberg@leonard.com



▲ **Small is Now Bigger**

Recent legislation made two significant changes to the procedure to collect personal property of a decedent by affidavit. First, the asset limit increased from \$20,000 to \$50,000. Second, the successor no longer has to present the affidavit in duplicate. The effective date for the new legislation is August 1st.

Boyd K. Johnson

Vest & Johnson, P.A.

Brooklyn Park

boyd@vestandjohnson.com



▲ **Appellate Advocacy**

Some recent studies have reflected what many appellate attorneys have long suspected: that the outcome of an appeal is related to the number of questions propounded by the jurists to the appellate advocates. More precisely, the party that gets the most questions is likely to lose, according to a study conducted a few

years ago by a then-law student at Georgetown University. The inquiry was followed up by a more thorough evaluation, now the subject of a more exhaustive examination of more than 2,500 oral arguments and in excess of 340,000 remarks from the bench by a law and political science professor at the University of Minnesota, Timothy R. Johnson, and two colleagues. Their studies show a very high prediction rate—86 percent in some instances—of the "most-asked-question"

rule: the recipient of the most questions in oral argument on appeal is the most likely to lose, sometimes by an overwhelming correlation. Appellate advocates can react to this long-suspected reality in several ways. One way is to pose questions to the appellate justices in briefs or oral argument, with the implication that they be propounded to the other side. Appellate advocates should,

as nearly everyone knows, respond to questions directed to them from the bench, but they may wish to keep their arguments brief, avoid implausible or weak arguments, and resist the temptation to take up as much time during oral argument. All these steps may minimize the number of questions that can be propounded to the advocate, thus increasing the chances of prevailing.

Marshall H. Tanick

Mansfield Tanick & Cohen, P.A.

Minneapolis

mtanick@mansfieldtanick.com



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