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Last month I reported to you about the widow who became obligated on a 10% penalty on a withdrawal from an IRA. There are several strategies available for a surviving spouse who is designated as a beneficiary of a decedent's IRA.

A surviving spouse who is a sole designated beneficiary of an IRA can leave the account as is, or he/she may choose to roll over the decedent's IRA into his/her own IRA, or elect to treat the IRA as his/her own for all purposes, including the Code Section 72(t), rules for pre-age 59-1/2 withdrawals. Whether the roll over election should be made by the surviving spouse (and when), depends on the surviving spouse's age.

For a surviving spouse older than age 59-1/2, he/she most likely is better off making a rollover election. By making the roll-over election, the surviving spouse can name his/her own beneficiaries for the IRA and thus give the IRA a longer life span. After the rollover election, the receiving IRA is treated as if the surviving spouse had funded it. That means the surviving spouse can compute minimum required distributions using the Uniform Lifetime Table for IRA owners. With the rollover election, the required beginning date for distributions is April 1st of the year following the year in which the surviving spouse attains age 70-1/2. By contrast, if the IRA remains in the decedent's name, and the decedent died before the RBD and the IRA permits lifetime distributions to the beneficiary, minimum distributions must begin by the later of December 31st of the year following the year in which the decedent died, or December 31st of the year in which the decedent would have attained age 70-1/2 had he/she lived.

If the surviving spouse is younger than 59-1/2, the spousal rollover or election to treat the decedent's IRA as a surviving spouse's IRA could have a significant disadvantage. Once the rollover election is made, pre-age 59-1/2 withdrawals from the IRA generally will be subject to the 10% penalty tax on top of regular income tax. By contrast, if the spousal rollover election is not made, pre-age 59-1/2 withdrawals from the decedent's IRA are not subject to the penalty tax. Under Code Section 72(t)(2)(A)(ii), distributions made to a beneficiary on or after the death of the IRA owner are excepted from the 10% penalty tax.

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This letter is intended to provide you with ideas for consideration in estate planning business. It is not intended to give a general solution applicable to all apparently similar individual problems, since slight changes in facts may require variance in legal advice. Please contact legal counsel with specific questions.