TO ROLL OR NOT TO ROLL: AN ANALYSIS OF FACTORS TO CONSIDER IN DECIDING WHETHER TO RETAIN RETIREMENT ASSETS IN AN EMPLOYER'S QUALIFIED PLAN OR WHETHER TO ROLL THEM TO AN IRA

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I. INTRODUCTION

Many employers sponsor qualified defined contribution plans to empower employees to effectively save money for retirement on a tax-favored basis.[1] The typical and popular

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1. A qualified plan allows the deferral of income tax on amounts contributed to the qualified plan, and the subsequent earnings thereon. *See, e.g.*, I.R.C. § 401(a) (West 2000 & Supp. 2006). The contributions and earnings thereon are not subject to income tax until distributed from the qualified plan. *See, e.g.*, *id.* § 402.

defined contribution plan is a 401(k) plan,[2] under § 401(k) of the Internal Revenue Code (the "Code").[3] A 401(k) plan is a defined contribution plan that contains a "cash or deferred arrangement" under which eligible employees participating in such plan can elect to take wages in cash or defer that income by having their employer make contributions under the plan on their behalf.[4] For many individuals, this retirement plan account represents their largest accumulation of wealth.[5]

When an individual terminates service with his employer, whether through retirement, severance, or other means, he may have the option of deciding whether to retain his retirement funds in the employer's qualified plan(s) to the extent allowed.[6] If he decides against retaining his retirement funds in the employer's qualified plans, he may either receive the funds in a taxable distribution[7] or transfer the funds to another "eligible retirement plan" via a rollover.[8] A rollover permits a plan participant to transfer the portion of a distribution that meets the definition of "eligible rollover distribution" to an eligible retirement plan to preserve the tax deferred status of such funds.[9] An Individual Retirement Account ("IRA") provides the

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2. U.S. DEPARTMENT OF LABOR – EMPLOYEE BENEFITS SECURITY ADMINISTRATION, WHAT YOU SHOULD KNOW ABOUT YOUR RETIREMENT PLAN 3 (2006), http://www.dol.gov/ebsa/pdf/wyskgreenbook.pdf [hereinafter YOUR RETIREMENT PLAN] (last visited May 16, 2007).

3. I.R.C. § 401(k) (2000). All references in this article to "the Code" are to the Internal Revenue Code of 1986 as amended and the corresponding Treasury Regulations thereunder as amended, unless specifically provided otherwise.

4. Treas. Reg. § 1.401(k)-1 (as amended in 2006).

5. Gair Bennett Petrie, *Estate and Income Tax Planning for Retirement Plans and IRAs*, 32 IDAHO L. REV. 253, 255 (1996); *see* Steven R. Lifson, *Practical Planning Ideas for Distributions from IRAs and Qualified Plans*, 37 J. MARSHALL L. REV. 807, 843 (2004).

6. Certain qualified plans are designed to distribute and cash out accounts of participants as soon as the participant is no longer employed by the company sponsoring the qualified plan, to the extent allowed. Sections 411(a)(11) and 417(e) generally limit the employer's ability to cash out an account involuntarily (unless the vested accrued value is less than $5,000) without the consent of the participant until he reaches normal retirement age. *Id.* §§ 411(a)(11) (2000 & Supp. III 2003), 417(e) (Supp. III 2003). Other qualified plans are designed to allow employees and their beneficiaries to retain the assets in such plan—and only require distributions as mandated by the minimum required distribution rules. *See* discussion *infra* Part IV.A.

7. I.R.C. § 402(a), (b) (2000).

8. The definition of "eligible retirement plan" depends upon the type of plan from which the rollover is made. An eligible retirement plan with respect to a qualified plan means a traditional IRA or an annuity under § 408(a) or (b), a qualified trust, or an annuity plan under § 403(a) or (b). *Id.* § 402(c)(8)(B) (2000 & Supp. III 2003). It can also include a governmental plan under § 457(b), provided such plan agrees to separately account for the funds received. *See id.* §§ 402(c)(8)(B)(v) (Supp. III 2003), 457 (2000 & Supp. III 2003).

9. *See id.* § 402(c)(1), (4) (2000 & Supp. III 2003); Treas. Reg. § 1.402(c)-2 (as amended in 2004); *see also* discussion *infra* Part II (generally summarizing the rollover

most common form of eligible retirement plan into which the participant may roll the distribution.[10] According to a study by Financial Research Corporation, an estimated $2.3 trillion in assets will be rolled over from employer-sponsored qualified plans into IRAs between the years 2003 and 2010.[11]

The purpose of this article is to illustrate that a decision to roll retirement assets from an employer-sponsored qualified plan into an IRA may not always be the best idea. This will entail a detailed discussion concerning the significant differences between a qualified plan and an IRA, outlining the important advantages of each.[12] Of course, an employer's particular plan may not offer every feature permitted under statutory and regulatory authority. A qualified plan may not even allow a participant to retain assets in the qualified plan after the participant's normal retirement age.[13] Accordingly, it is important for individuals to familiarize themselves with the particular features of the employer's qualified plan. This article will outline important factors to consider in making the ultimate decision—to roll or not to roll.

II. BASIC OVERVIEW OF ROLLOVER RULES

Before discussing important differences and features between a qualified plan and an IRA, a general overview of the rules concerning rollovers is necessary. This discussion is not intended to provide an exhaustive review of the rollover requirements, but rather to provide a basic framework necessary

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rules).

10. *See* Richard L. Kaplan, *Retirement Funding and the Curious Evolution of Individual Retirement Accounts*, 7 ELDER L.J. 283, 289 (1999).

11. Ray Martin, *Rethinking Rollovers: Six Advantages to Staying with a Company Retirement Plan*, CBS MARKETWATCH, Aug. 18, 2004, http://www.marketwatch.com/News/Story/Story.aspx?guid={7588F4DF-EEA1-4815-A163-4738659BF643} (last visited May 16, 2007).

12. Not all features and differences between qualified plans and IRAs will be discussed. For example, the article will not address differences stemming from ERISA preemption of state laws and bankruptcy protection. This article assumes the individual intends to maximize the tax deferral opportunities afforded by statutory and regulatory authority for himself and his beneficiaries. It also assumes that the qualified plan is a 401(k) plan because, as remarked before, a 401(k) plan represents the most widely used qualified plan sponsored by employers for retirement savings. *See* YOUR RETIREMENT PLAN, *supra* note 2, at 3; Kaplan, *supra* note 10, at 289. This article also mainly focuses on the considerations applicable to the former employee who has participated in the qualified plan; in certain cases, the former employee's beneficiaries may need to make the same decision on whether to roll over the funds from the qualified plan to an IRA.

13. Many qualified plans will cash out participants after they terminate from service, subject to certain limitations imposed by law. *See supra* note 6.

to aid individuals in making an informed decision on whether to request a rollover to an IRA.

Distributions from a qualified plan or IRA are generally taxable as ordinary income in the year the distribution is made.[14] However, certain distributions may be rolled over tax-free into another eligible retirement plan and defer the recognition of income if they qualify as "eligible rollover distributions."[15] An eligible rollover distribution is any distribution to a qualified trust for the benefit of a participant-employee,[16] with certain statutory or regulatory exceptions, including but not limited to:

1. "[A]ny distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made—(i) for the life (or life expectancy) of the employee or . . . of the employee and the employee's designated beneficiary, or (ii) for a specified period of 10 years or more . . . .";[17]
2. "[A]ny distribution to the extent such distribution is required under [I.R.C. §] 401(a)(9)"[18] (the minimum required distribution rules);
3. Any hardship distribution;[19]
4. Distributions to correct excess annual additions, excess deferrals, excess contributions, and excess aggregate contributions, along with associated earnings on such amounts;[20]
5. Plan loans that have defaulted and are treated as deemed distributions under [I.R.C.] § 72(p);[21]
6. "Dividends paid on employer securities as described in [I.R.C. §] 404(k)";[22] and
7. "Similar items designated by the [Internal Revenue Service ("IRS")]."[23]

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14. I.R.C. §§ 402(a), (b)(2) (2000), 408(d)(1).
15. *Id.* § 402(c)(1).
16. *Id.* § 402(c)(4) (2000 & Supp. III 2003).
17. *Id.* § 402(c)(4)(A) (2000).
18. *Id.* § 402(c)(4)(B).
19. *Id.* § 402(c)(4)(C) (Supp. III 2003) (referring to distributions described in I.R.C. § 401(k)(2)(B)(i)(IV)).
20. Treas. Reg. § 1.402(c)-2, Q&A (4)(a)-(c) (as amended in 2004).
21. *Id.* Q&A (4)(d).
22. *Id.* Q&A (4)(e).
23. *Id.* Q&A (4)(g).

In addition, special rules apply to spousal beneficiaries that enable them to roll funds from a qualified plan to an IRA and treat the IRA as the spouse's own account.[24] Non-spousal beneficiaries may also have limited rollover rights as of January 1, 2007 under the Pension Protection Act of 2006.[25] For purposes of this article, the rights of spousal beneficiaries and non-spousal beneficiaries of a qualified plan account will not be discussed in detail.

Eligible rollover distributions received from an eligible retirement plan must either be transferred to another eligible retirement plan via a direct rollover or transferred by the participant to another eligible retirement plan no later than the sixtieth day after the distribution from the plan.[26] A "direct rollover" is "an eligible rollover distribution that is paid directly to an eligible retirement plan for the benefit of the [participant]."[27] Unless a direct rollover is made, an eligible rollover distribution from the qualified plan is subject to mandatory federal income tax withholding of twenty percent.[28]

Eligible rollover distributions generally may not exceed the amount otherwise includable in gross income.[29] The Economic Growth and Tax Relief Reconciliation Act of 2001 relaxed this limitation such that on or after January 1, 2001, an after-tax contribution may be rolled over only if accomplished via a direct rollover to an IRA or a qualified defined contribution plan that will separately account for the after-tax contributions.[30]

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24. *See* I.R.C. § 402(c)(9); Treas. Reg. § 1.408-8, Q&A (7) (as amended in 2004); *see also* discussion *infra* Part IV.A (concerning the minimum required distribution rules).

25. *See* Pub. L. No. 109-280, § 829(a)(1), 120 Stat. 780, 1001-02 (2006) (to be codified as amended at I.R.C. § 402(c)(11)(A)). As of January 1, 2007, non-spousal beneficiaries are allowed the opportunity to roll over amounts from a qualified plan to an inherited IRA, if the qualified plan so permits. *Id.*; *see also* I.R.S. Notice 2007-7, 2007-5 I.R.B. 395, 397, Q&A (14).

26. *See* Treas. Reg. § 1.402(c)-2, Q&A (1)(a); *see also* I.R.C. § 402(c)(3) (Supp. III 2003) (time period requirement); Treas. Reg. § 1.401(a)(31)-1, Q&A (3) (as amended in 2000) (direct rollovers); Treas. Reg. § 1.402(c)-2, Q&A (11) (time period requirement), Q&A (13) (designation requirement).

27. Treas. Reg. § 1.401(a)(31)-1, Q&A (3). Typically, the participant will receive a check from the qualified plan payable to the IRA or other eligible retirement plan and will be responsible for turning the check over to that payee. The check cannot be made payable directly to the participant and "must be negotiable only by the trustee of the eligible retirement plan." *Id.* The direct rollover can also be accomplished through the use of a wire transfer. *Id.*

28. I.R.C. § 3405(c) (2000 & Supp. III 2003). The participant is subject to income tax to which the twenty percent withholding tax can offset.

29. *Id.* § 401(a)(31)(C) (West 2000 & Supp. 2006); § 402(c)(2) (Supp. III 2003).

30. Pub. L. No. 107-16, § 643(a), 115 Stat. 38, 122 (codified as amended at I.R.C. § 402(c)(2) (Supp. III 2003)). The Pension Protection Act of 2006 extended the applicability of these rules to cover direct rollovers to a defined benefit plan, not just

However, after-tax contributions cannot be rolled from an IRA to a qualified plan: once the participant rolls after-tax contributions to an IRA, those amounts can only be rolled to another IRA.[31]

III. FEATURES A QUALIFIED PLAN MAY OFFER WHICH AN IRA CANNOT

A qualified plan may offer two main features not available in an IRA: plan loans and the special tax treatment for net unrealized appreciation ("NUA") resulting from employer securities. Each provides a valuable benefit to the participant that cannot be replicated in the IRA context.

A. *Plan Loans*

In general, a qualified plan may be designed to provide plan loans to participants if such loans are bona fide,[32] made available to plan participants on a nondiscriminatory basis, abide by specific plan provisions, bear a reasonable interest rate and repayment schedule, and are adequately secured.[33] Plan sponsors often design their qualified plans to permit plan loans.[34] Although designed primarily to attract those employees who would not otherwise participate in the qualified plan,[35] plan loans can be made available to participants who are former employees[36] or beneficiaries.[37]

Qualified plan loans that meet certain requirements are not considered taxable distributions from the qualified plan. Under § 72(p), a plan loan must be limited as to its amount and term.[38] It must also meet certain documentation requirements[39] and provide for a level amortization schedule.[40] The plan loan amount cannot exceed the lesser of:

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defined contribution plans. *See* Pub. L. No. 109-280, § 824(a), 120 Stat. 780, 998 (2006) (to be codified as amended at I.R.C. § 408A(e)).

31. I.R.C. § 402(c)(2); I.R.S. Notice 2002-3, 2002-1 C.B. 289, 292.

32. I.R.S. Notice 82-22, 1982-2 C.B. 751, 751.

33. I.R.C. § 4975(d)(1) (2000); I.R.S. Notice 82-22, 1982-2 C.B. 751, 751.

34. *See* Kaplan, *supra* note 10, at 292; RetirementPlanners.com, Start a New Retirement Plan for Your Organization, http://www.retirementplanners.com/rpa/plan/new_plan.html (last visited May 16, 2007).

35. *See* U.S. GEN. ACCOUNTING OFFICE, 401(K) PENSION PLANS: LOAN PROVISIONS ENHANCE PARTICIPATION BUT MAY AFFECT INCOME SECURITY FOR SOME 1 (1997), http://www.gao.gov/archive/1998/he98005.pdf [hereinafter LOAN PROVISIONS ENHANCE PARTICIPATION] (last visited May 16, 2007).

36. *Id.* at 20 n.21.

37. *Id.* § 72(p)(1)(A).

38. *Id.* § 72(p)(2).

39. Treas. Reg. § 1.72(p)-1, Q&A (3)(b) (as amended in 2006).

40. I.R.C. § 72(p)(2)(C).

1. $50,000 less the excess of the highest outstanding loan balance of all plan loans to the participant during the preceding twelve months, over the outstanding loan balance of plan loans to the participant on the date the loan is made;[41] or
2. The greater of one-half of the participant's vested account value in the plan or $10,000.[42]

All outstanding loans from any other qualified plan of the employer (or related control group) are considered and aggregated for this purpose.[43] In addition, the maximum term of a plan loan must not exceed five years unless it is "used to acquire any dwelling unit which within a reasonable time is to be used . . . as the principal residence of the participant."[44] The loan must also be repaid in level payments of principal and interest, at least quarterly, over the life of the loan.[45]

The main advantage of a plan loan is to provide limited access to funds for participants who are actively employed and are not eligible for in-service distributions.[46] Plan loans also usually provide a lower interest rate than otherwise available through a bank or mortgage company,[47] and the interest the participant pays is contributed to his plan account and treated as investment earnings.[48] The IRS actually views plan loans as an investment option under a qualified plan.[49]

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41. *Id.* § 72(p)(2)(A)(i).

42. *Id.* § 72(p)(2)(A)(ii).

43. *See id.* § 72(p)(2)(D).

44. *Id.* § 72(p)(2)(B).

45. *Id.* § 72(p)(2)(C).

46. A plan loan provides an opportunity for employees participating in a 401(k) plan to access a portion of the account when in-service distributions are not allowed. *See, e.g.*, New York Life Investment Management, LLC, 401(k) In-Service Withdrawals: Jump-Start Your Retirement Income Planning with an In-Service, Non-Hardship Withdrawal from Your Company-Sponsored Retirement Plan, http://www.dbcomplete.com/New_York_Life/Content/PASS/Files/Other/20060504152228_172kb_401k_In-Service_WD_05-04-06.pdf (last visited May 16, 2007); *see also* Guide to 401k Plan Loans and Withdrawals, http://www.guideto401kloans.com [hereinafter Guide to 401k Plan Loans and Withdrawals] (last visited May 16, 2007) (describing the pros and cons of 401k loans including the "opportunity costs" of being paid a lesser interest rate in a 401(k) than in other plans). The ability to have immediate access to a portion of the account will encourage many to participate in the qualified plan and/or make contributions to the plan at a greater level. LOAN PROVISIONS ENHANCE PARTICIPATION, *supra* note 35, at 1-2.

47. Although the participant is able to obtain the advantages of a plan loan, it is important to note that he is also forgoing investment earnings he would otherwise receive if the funds were directed to another available investment option under the qualified plan. Eileen Alt Powell, *Need Cash? Don't Rob Your 401(k)*, SEATTLE TIMES, Sept. 18, 2005, at E5.

48. *Id.*

49. I.R.S. Notice 82-22, 1982-2 C.B. 751, 752; I.R.S. Priv. Ltr. Rul. 91-22-059 (May

Although plan loans may be extended to former employees and beneficiaries, many qualified plans are designed to restrict plan loans only to participants who are actively employed.[50] Qualified plans may also provide for an acceleration of the entire outstanding balance in the event of termination from employment.[51] Accordingly, it is important to obtain details concerning the plan loan program of one's qualified plan if this benefit or policy may influence one's decision to retain assets in the qualified plan as opposed to rolling over to an IRA.

B. *NUA from Employer Securities*

Special rules apply to distributions of employer securities[52] from qualified plans. These rules allow the participant to receive employer securities and defer the recognition of the appreciation in the securities (i.e., the net unrealized appreciation ("NUA")).[53] NUA is "the excess of the market value of [the] securities at the time of distribution over the cost or other basis" of the qualified plan.[54] NUA treatment is available for all employer securities distributed in-kind if they are part of a lump-sum distribution.[55] If the employer securities are distributed in a manner that does not qualify as a lump sum distribution, NUA treatment is only available to the extent that the appreciation is attributable to nondeductible employee contributions (i.e. after-tax contributions).[56] To qualify as a lump-sum distribution, the distribution must be of the entire balance and credited to the employee within one tax year.[57] For the purpose of applying

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31, 1991), *available at* 1991 WL 778778.

50. *See* LOAN PROVISIONS ENHANCE PARTICIPATION, *supra* note 35, at 20 n.21 (1997). This is consistent with a policy to benefit only those who are actively employed. *See* sources cited *supra* note 6.

51. *See* Guide to 401k Plan Loans and Withdrawals, *supra* note 46; *see also* sources cited *supra* note 6.

52. "Employer securities" refers to "shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form," and may include securities issued by a parent or subsidiary of the employer corporation. *See* I.R.C. § 402(e)(4)(E) (2000).

53. *Id.* § 402(e)(4)(B); Treas. Reg. § 1.402(a)-1(b)(1) (as amended in 2005). The inherent appreciation in the employer securities will remain deferred as long as the securities are held by the participant. *See* Treas. Reg. § 1.402(a)-1(b)(2)(i).

54. Treas. Reg. § 1.402(a)-1(b)(2)(i).

55. I.R.C. § 402(e)(4)(B).

56. *Id.* § 402(e)(4)(A).

57. *Id.* § 402(e)(4)(D)(i). The definition of lump-sum distribution also provides that the distribution must be from an exempt trust and payable after one of four "triggering events." *See id.* However, this article will not cover this level of detail.

these rules, all qualified plans of the same type are aggregated and treated as a single plan.[58]

A participant may take advantage of NUA treatment by requesting an in-kind distribution of the employer securities and transferring the balance of his account in the qualified plan to an IRA in a direct rollover.[59] In that situation, the participant will be subject to tax only upon the value of the employer securities (less the NUA) in the year of the distribution.[60] The NUA will not be taxed until the employer securities are subsequently sold.[61] The plan administrator will issue a Form 1099-R indicating the taxable portion of the distribution and the amount representing NUA.[62]

Upon the subsequent taxable disposition of the employer securities, the portion of the gain attributable to NUA will be taxable as long-term capital gain, regardless of the length of time that the plan or the employee held the employer securities.[63] Gain in excess of the NUA (i.e. attributable to appreciation after the distribution of the employer securities from the qualified plan) will be taxed as either short- or long-term capital gain as determined by the holding period after distribution from the qualified plan.[64] This favorable tax treatment only applies to distributions of employer securities from a qualified plan and is therefore not available in an IRA.[65]

A participant should carefully consider the NUA rules if he holds employer securities in a qualified plan account because he may not want to roll over funds to an IRA if employer securities are involved. Although he may retain the NUA treatment by requesting a distribution of the employer securities in-kind and transferring the remainder of the balance of the qualified plan

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58. *Id.* § 402(e)(4)(D)(i), (ii). Profit sharing plans and 401(k) plans are considered the same type. *Id.* § 402(e)(4)(D)(ii)(I).

59. The participant may also avoid taxation via a regular rollover; however, he will need to make up the amount withheld on the portion of the distribution eligible for rollover. For detailed information concerning the rollover rules, see discussion *supra* Part II.

60. *See* I.R.C. § 402(e)(4)(B); Treas. Reg. § 1.402(a)-1(b)(1)(i) (as amended in 2005); *see also* discussion *supra* Part II.

61. Treas. Reg. § 1.402(a)-1(b)(1)(i).

62. *See* U.S. DEP'T OF TREASURY, FORM 1099-R, DISTRIBUTIONS FROM PENSIONS, ANNUITIES, RETIREMENT OR PROFIT-SHARING PLANS, IRAS, INSURANCE CONTRACTS, ETC. (OMB No. 1545-0119), *available at* http://www.irs.gov/pub/irs-pdf/f1099r.pdf (last visited May 16, 2007); *see also* I.R.C. §§ 402(e)(4) (NUA application), 6047(d) (2000) (granting the Secretary of the Treasury authority to require reporting by plan sponsors or plan administrators regarding the qualified plan).

63. *See* Treas. Reg. § 1.402(a)-1(b)(1)(i).

64. *Id.*

65. *See generally id.* § 1.402(a)-1.

account to an IRA, he loses the tax deferral opportunity where he could retain the employer securities in the qualified plan. This may be important to ensure long-term capital gain treatment on the portion of the taxable gain attributable to NUA.

IV. OTHER FEATURES THAT GENERATE DIFFERENCES BETWEEN QUALIFIED PLANS AND IRAS

A. *Minimum Required Distributions*

As stated by the Joint Committee of Taxation, the justification for giving tax-favored status to qualified plans (or IRAs) is the "replacement of a participant's preretirement income stream at retirement—rather than for the indefinite deferral of tax on a participant's accumulation under the plan."[66] To deter the use of qualified plan or IRA assets "for purposes other than retirement" (e.g., estate planning), Congress has "impose[d] restrictions on the timing and the amounts of a participant's benefits distributed from a qualified plan [and/or IRA] in order to provide for the distribution of benefits during the [participant's lifetime]."[67] These provisions are commonly referred to as the "MRD rules"[68] and apply to both qualified plans and IRAs.[69]

MRD rules "are intended to ensure that benefits begin at a certain time and are paid at a certain level to achieve the intended purpose of the use of the assets in a qualified retirement plan."[70] If a distribution is not made in accordance with MRD rules, a fifty-percent excise tax is applied to the amount of the shortfall[71] and imposed on the payee of the MRD amount.[72] Under MRD rules, distributions of a participant's account must commence by the participant's "required beginning date."[73]

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66. STAFF OF J. COMM. ON TAX'N, 99TH CONG., GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986 710 (Comm. Print 1987), *available at* http://www.house.gov/jct/jcs-10-87.pdf [hereinafter GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986].

67. Bruce J. McNeil, *Required Minimum Distributions: A Summary of the Rules*, 27 J. OF PENSION PLANNING & COMPLIANCE 58, 58 (2001); GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986, *supra* note 66, at 654-55.

68. MRD is an acronym for "minimum required distribution" under the Code. *See* I.R.C § 401(a)(9)(A) (2000); *e.g., id.* § 4974(b).

69. GENERAL EXPLANATION OF THE TAX REFORM ACT OF 1986, *supra* note 66, at 654-55; Edward A. Zelinsky, *The Defined Contribution Paradigm*, 114 YALE L.J. 451, 516 (2004).

70. McNeil, *supra* note 67, at 58.

71. I.R.C. § 4974(a). This penalty may be abated if reasonable cause is shown. *Id.* § 4974(d).

72. *Id.* § 4974(a).

73. I.R.C. §§ 401(a)(9)(A) (qualified plans), 408(a)(6) (IRAs). A participant's

During the life of the participant, the MRD amount is determined each year by dividing the value of the participant's account ("as of the last valuation date in the calendar year immediately preceding that distribution calendar year") by the "applicable distribution period."[74] The applicable distribution period generally is determined by the use of the Uniform Lifetime Table,[75] which is derived from a joint life expectancy calculation based on the age of the participant and his spouse (who is not more than ten years younger than the participant) in each distribution calendar year.[76] If the participant's surviving spouse is the sole designated beneficiary and is more than ten years his junior, "the applicable distribution period is . . . the joint life expectancy of the [participant] and spouse using the [participant]'s and spouse's attained ages as of the [participant]'s and the spouse's birthdays in the distribution calendar year."[77] For purposes of this rule, the spouse is the sole designated beneficiary "for a distribution calendar year during the [participant]'s lifetime only if the spouse is the sole beneficiary of the [participant]'s entire interest at all times during the distribution calendar year."[78]

Although the MRD rules applicable to qualified plans are very similar to those applicable to IRAs, there are important differences. One such difference is that if an individual is a participant in more than one qualified plan, each plan must meet the MRD requirements separately.[79] Individuals with multiple IRAs, on the other hand, may calculate the MRD amount for each IRA and satisfy the total MRD amount for all IRAs from any one or more IRAs.[80] For a participant, this may or may not be an important factor in deciding between a qualified plan and an

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required beginning date for a qualified plan is "April 1 of the calendar year following the later of (I) the calendar year in which [he] attains age 70 ½, or (II) the calendar year in which [he (other than a more than five percent owner)] retires" from the employer sponsoring and maintaining the qualified plan. *Id.* § 401(a)(9)(C)(i), (ii).

74. Treas. Reg. § 1.401(a)(9)-5, Q&A (1)(a), Q&A (3)(a) (as amended in 2004).

75. *Id.* § 1.401(a)(9)-5, Q&A (4)(a).

76. *See id.* § 1.401(a)(9)-9, Q&A (2) (2002).

77. *Id.* § 1.401(a)(9)-5, Q&A (4)(b) (as amended in 2004); *see also id.* § 1.401(a)(9)-9, Q&A (2) (Uniform Lifetime Table).

78. *Id.* § 1.401(a)(9)-5, Q&A (4)(b). If the designated beneficiary is a trust for which a spouse is the beneficiary, said spouse may or may not be considered the sole beneficiary for purposes of this rule (i.e. availability to elect to take distributions based upon joint life expectancy). *See id.* Q&A (7)(c)(3).

79. *Id.* § 1.401(a)(9)-8, Q&A (1) (as amended in 2004); *see also* I.R.C. § 401(a)(9)(A) (2000).

80. Treas. Reg. § 1.408-8, Q&A (9) (as amended in 2004). However, IRAs held by an individual may not be aggregated for this purpose with an IRA that was inherited by such individual. *Id.*

IRA; however, there may be more incentive for a surviving spouse who is the designated beneficiary of a qualified plan account to roll the funds to an IRA due to the MRD rules that apply to a surviving spouse.

The MRD rules that apply to a surviving spouse who is the sole designated beneficiary under a qualified plan depend upon when the participant dies relative to his required beginning date.[81] If the participant dies *on or after* his required beginning date, the surviving spouse can calculate the MRD amounts based upon a distribution period determined under either (1) the surviving spouse's attained age in each subsequent distribution year (i.e recalculated annually), or (2) the deceased participant's remaining life expectancy, without recalculation.[82] Distributions to the surviving spouse must begin no later than the end of the year following the participant's death.[83] If the participant dies *before* his required beginning date, the surviving spouse's MRD amounts are based upon a distribution period determined under his attained age in each subsequent distribution year (i.e recalculated annually).[84] Distributions to the surviving spouse "must commence on or before the later of (1) [t]he end of the calendar year immediately following the [participant's death]; and (2) [t]he end of the calendar year in which the [participant] would have attained age 70 ½."[85]

In either event, the surviving spouse has the option to roll the qualified plan funds to an IRA and designate it as his or her own.[86] If the spouse does so, the MRD amounts must begin on or before April 1 following the year in which he attains age 70 ½.[87] The spouse's beneficiary designation for the rollover IRA will then be relevant in determining the distribution period for purposes of calculating the MRD amount each year.[88] This

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81. *Id.* Q&A (5).

82. *See id.* § 1.401(a)(9)-5, Q&A (5); *see also* Karen S. Gerstner, *The New Minimum Distribution Rules for Qualified Retirement Plans and IRAs*, 53 BAYLOR L. REV. 625, 640 (2001). The surviving spouse has the option to retain a distribution period based upon the deceased participant's life expectancy. Treas. Reg. § 1.401(a)(9)-5, Q&A (5). The applicable distribution period is reduced by one year for each subsequent calendar year. *Id.* Q&A (5)(c)(2). The surviving spouse would probably utilize this option if he or she is much older than the deceased participant's age at death.

83. Treas. Reg. § 1.401(a)(9)-3, Q&A (3)(b) (as amended in 2004).

84. *See id.* § 1.401(a)(9)-5, Q&A (5)(b), (c)(2).

85. *Id.* § 1.401(a)(9)-3, Q&A (3)(b).

86. *See id.* § 1.408-8, Q&A (7).

87. *Id.* Q&A (3) (defining "required beginning date" as "April 1 of the calendar year following the calendar year in which the individual attains age 70 ½").

88. *See id.* § 1.401(a)(9)-4, Q&A (4)(b), (c) (as amended in 2004); Steven R. Lifson, *Practical Planning Ideas for Distributions from IRAs and Qualified Plans*, 37 J. MARSHALL L. REV. 807, 834 (2004). The surviving spouse's designated beneficiary is

option may provide the spouse additional tax-deferral opportunities not available had the funds been retained in the qualified plan.[89] The ultimate decision on whether the qualified plan or IRA will provide the maximum tax-deferral opportunity will thus depend upon whether the surviving spouse is significantly older or younger than the deceased participant.[90] Typically, a rollover by the surviving spouse to an IRA will provide the greater tax-deferral benefit.[91]

The Pension Protection Act of 2006 revised the rules to allow non-spousal beneficiaries the opportunity to roll amounts into an IRA beginning on or after January 1, 2007.[92] However, the IRS has interpreted this provision to be an optional benefit which qualified plans are not required to offer.[93] Accordingly, the non-spousal beneficiary may only roll to an IRA if the qualified plan specifically provides for this benefit. It is important to note that the rollover rights of a non-spousal beneficiary are not the same as the rollover rights of a spousal beneficiary. A non-spousal beneficiary rollover is treated as a rollover to an inherited IRA.[94] This means the IRA cannot be treated as the account of the non-spousal beneficiary and the "inherited" IRA will generally need to retain the MRD rules that applied to the qualified plan.[95] Therefore, the tax-deferral incentives available to a spousal beneficiary in this context do not apply in the case of a non-spousal beneficiary.

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determined on the next September 30 in the year following the spouse's death. Treas. Reg. § 1.401(a)(9)-4, Q&A (4)(b). If the spouse has no designated beneficiary as of that date, "distribution must be made in accordance with the 5-year rule in [I.R.C. §] 401(a)(9)(B)(ii) and . . . [Treas. Reg.] § 1.401(a)(9)-3 [Q&A (2)]." *Id.* If the spouse's designated beneficiary dies before the September 30 following the spouse's death, he is still treated as the designated beneficiary. *Id.* Q&A (4)(c); *see id.* § 1.401(a)(9)-3, Q&A (5).

89. *See supra* notes 74-78 and accompanying text (discussing the relevance of the designated beneficiary's age in the calculation of the applicable distribution period when computing a participant's required distributions from an IRA). These rules contrast with the MRD rules for qualified plans, whereby required distributions are dependent on whether the participant died on or before his required beginning date. *See supra* notes 81-85 and accompanying text.

90. *See supra* notes 74-78, 81 and accompanying text.

91. *See* Lifson, *supra* note 88, at 834-35.

92. Pub. L. No. 109-280, § 829, 120 Stat. 780, 1001-02 (to be codified at I.R.C. § 402(c)(11)).

93. I.R.S. Notice 2007-7, 2007-5 I.R.B. 395, 397, Q&A (14).

94. *See* Pension Protection Act of 2006, § 829(a)(1), 120 Stat. at 1001-02; I.R.S. Notice 2007-7, 2007-5 I.R.B. 395, 397, Q&A (10)-(11).

95. *See* IRS Notice 2007-7, 2007-5 I.R.B. 395, 398, Q&A (19).

B. *Early Distribution Penalty*

To discourage distributions from a qualified plan or IRA before retirement, an excise tax of ten percent applies to the taxable portion of the distribution received before attaining age 59 ½ unless an exception applies.[96] However, there are numerous exceptions to this excise penalty for early distribution from either qualified plans or IRAs, including but not limited to amounts:

1. Made to a beneficiary or the participant's estate on or after the participant's death;[97]
2. Attributable to the participant's disability;[98]
3. That are "part of a series of substantially equal periodic payments . . . made [at least annually] for the life (or life expectancy) of the [participant]" or the participant and a designated beneficiary;[99]
4. To the extent of medical expenses deductible for the year under § 213 (whether or not actually deducted);[100] and
5. Made to an individual who is a reservist or national guardsman and ordered or called to active duty between September 11, 2001 and December 31, 2007.[101]

Certain exceptions are available to qualified plans that are not available to distributions from IRAs, including amounts:

1. Made upon separation from service after attaining age fifty-five;[102] and
2. Made to a former spouse, child, or other dependent under a Qualified Domestic Relations Order.[103]

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96. I.R.C. § 72(t)(1)-(2) (West 2000 & Supp. 2006).

97. *Id.* § 72(t)(2)(A)(ii) (2000).

98. *Id.* § 72(t)(2)(A)(iii).

99. *Id.* § 72(t)(2)(A)(iv). Separation from the employer's service is required in the case of distributions from a qualified plan but not an IRA. *Id.* § 72(t)(2)(A)(v), (3)(A).

100. *Id.* § 72(t)(2)(B).

101. Pension Protection Act of 2006, Pub. L. No. 109-280, § 827(a), 120 Stat. 780, 999-1000 (to be codified at I.R.C. § 72(t)(2)(G)).

102. I.R.C. § 72(t)(2)(A)(v). The exemption will also apply if one will attain at least age fifty-five by the end of the same calendar year. *See* I.R.S. Notice 1987-13, 1987-1 C.B. 432, 441, Q&A (20).

103. *Id.* §§ 72(t)(2)(C), 414(p)(1).

On the other hand, some exceptions available to IRAs are not available to distributions from a qualified plan, including amounts:

1. To pay health insurance costs while unemployed;[104]
2. For higher education costs for the IRA owner or the IRA owner's spouse, child, or grandchild;[105] and
3. To pay acquisition costs of a first home of the IRA owner or the IRA owner's spouse, child, grandchild, or ancestor (or ancestor of the IRA owner's spouse), up to a $10,000 lifetime maximum.[106]

These rules may play an important role in determining whether to retain one's retirement assets in the qualified plan or roll them to an IRA. If the participant terminates service before attaining age fifty-five and requires certain distributions from his account, the substantially equal periodic payments exception may provide him the opportunity to avoid the ten percent early distribution penalty.[107] In such a situation, if the participant requires a distribution to pay educational costs or first home acquisition costs for a child or grandchild, a rollover to an IRA may be advisable.[108]

C. *Investment Options and Fees*

The investment options offered by one's qualified plan may be an important consideration in deciding whether to retain one's retirement assets in it. As previously discussed, a qualified plan may offer an option to invest in employer securities, which may provide the participant with the opportunity for special NUA treatment.[109] Certain qualified plans may also offer "stable-value" or "guaranteed-fund" investment options that are not available in IRAs.[110] These may be important investment options for certain older participants who favor a conservative fund designed for preservation of assets and provision of predictable returns.

Qualified plans sponsored by large employers typically "have powerful bargaining leverage over investment managers and

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104. *Id.* § 72(t)(2)(D) (West 2006).
105. *Id.* § 72(t)(2)(E) (2000), (t)(7) (West 2000 & Supp. 2006).
106. *Id.* § 72(t)(2)(F), (t)(8) (2000).
107. *See id.* § 72(t)(2)(A)(v).
108. *See id.* § 72(t)(2)(E)-(F).
109. *See* discussion *supra* Part III.B.
110. Martin, *supra* note 11.

service providers . . . to negotiate institutional pricing for investment management at low rates."[111] According to a study commissioned by the Department of Labor,[112] investment management fees for investment funds offered by qualified plans are typically lower than the fees for investment funds offered by IRAs.[113] The study found that the management fees for investment funds in qualified plans typically range from .35% to 1.01%, and the management fees for investment funds in IRAs typically range from .59% to 1.95%.[114] Annuity costs may also be lower in a qualified plan (as opposed to a retail IRA) due to the employer's ability to leverage its size and negotiate more favorable terms from the annuity providers.[115]

Qualified plans also do not generally charge low-balance fees.[116] IRAs on the other hand, often impose a minimum balance requirement or charge annual account fees if the balance does not meet a certain threshold.[117] Also, unlike IRAs, qualified plans usually do not charge transaction fees for buying and selling funds.[118] Although IRAs typically offer more investment options than qualified plans and provide greater access to investment management and advice,[119] qualified plans are improving in this respect. "According to a survey by the Profit Sharing Council of America, more than half of employer plan sponsors now hire investment advisers to provide investment advice to their plans participants."[120] In addition, the

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111. *Id.*

112. ECONOMIC SYSTEMS, INC., STUDY OF 401(K) PLAN FEES AND EXPENSES § 4.2.1, Table IV-3 (1998), *available at* http://www.dol.gov/ebsa/pdf/401kRept.pdf [hereinafter STUDY OF 401(K) PLAN FEES AND EXPENSES].

113. *Id.*; *see also* Martin, *supra* note 11.

114. STUDY OF 401(K) PLAN FEES AND EXPENSES, *supra* note 112, at § 4.2.1, Table IV-3; Martin, *supra* note 11.

115. *See* Martin, *supra* note 11.

116. *Id.*

117. *Id.*

118. *Id.*

119. Most defined contribution plans offer participants roughly eight to twelve investment options. KEITH CLARK, THE QUALIFIED PLAN INDUSTRY AT A GLANCE: TRENDS, DIRECTION, AND THE ROAD AHEAD 2 (2006), *available at* http://www.freeerisa.com/features/Trends.pdf. Some offer more—the Vanguard Group offers IRA investors over seventy mutual fund choices. The Vanguard Group, Inc., Roll Your Employer-Sponsored Plan into a Vanguard IRA, https://flagship.vanguard.com/VGApp/hnw/accounttypes/retirement/ATSRollOverPlanContent.jsp (last visited May 16, 2007).

120. Martin, *supra* note 11; *see* Jane Bryant Quinn, *Money Guide: Making Nest Eggs Last*, NEWSWEEK, June 20, 2005, at 65; *see also* Matthew Boyle, *Help! My Company Keeps Changing My 401k*, FORTUNE, Dec. 26, 2005, at 107 ("37% of [401(k)] plan sponsors offer third-party investment advisory services, which can include online advice or one-on-one counseling, up from 18% in 2001."). *But see* Jeff Brown, *Homing in on Help for 401(k) Investors*, PHILADELPHIA INQUIRER, Feb. 26, 2006 ("[O]nly about one in five employers provides any kind of investment advice to 401(k) participants . . . .") (referring to studies

Department of Labor has recently proposed revisions of its rules for providing protection under § 404(c) of the Employee Retirement Income Security Act of 1974 ("ERISA").[121] This may lead many qualified plans to offer more investment options. Ultimately, it is important to determine the investment options and associated fees available under one's qualified plan and compare them to the investment options available through the IRAs that one is considering utilizing.

D. *Withdrawal Features*

The withdrawal features available under a specific qualified plan may also play an important consideration in deciding whether to retain the assets in it. Many qualified plans offer distributions via periodic installment payments.[122] These payments could be for any amount and paid in the frequency desired (monthly, quarterly, semi-annually, or annually).[123] This feature is important to many participants because it may provide the mechanism necessary to meet the substantially equal periodic payment exception to the ten percent early distribution penalty.[124] To meet the exception, payments must be calculated as specified by the IRS under either the Required Minimum Distribution ("RMD"), amortization, or annuitization method and must be distributed at least annually.[125] These may be important considerations when comparing the features between the qualified plan and the IRAs that may be utilized.

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by the Profit Sharing/401(k) Council of America).

121. Default Investment Alternatives Under Participant Directed Individual Account Plans, 71 Fed. Reg. 56806 (proposed Sep. 27, 2006) (to be codified at 29 C.F.R. pt. 2550), *available at* http://www.dol.gov/ebsa/regs/fedreg/proposed/2006008282.pdf; *see also* Pension Protection Act of 2006, Pub. L. No. 109-280, § 624, 120 Stat. 780, 980 (to be codified at 29 U.S.C. § 1104(c)) (amending ERISA and setting deadline for final regulations).

122. *See, e.g.*, Products & Services – Retirement Plan Rollover Considerations, http://www.axaonline.com/rs/axa/services-products/7b6_ira_Retirement_Plan_Rollover_Options.html (last visited May 16, 2007); Vanguard.com, Taking a Distribution, https://flagship.vanguard.com/VGApp/hnw/accounttypes/retirement/ATSTradIRADistContent.jsp [hereinafter Taking a Distribution] (last visited May 16, 2007).

123. Taking a Distribution, *supra* note 122.

124. *See* I.R.C. § 72(t)(2)(A)(iv) (2000); Taking a Distribution, *supra* note 122. Only participants under 59 ½ years of age are subject to this penalty. *See* I.R.C. § 72(t)(1)-(2) (West 2000 & Supp. 2006).

125. Rev. Rul. 2002-62, 2002-42 I.R.B. 710, 710.

V. SPECIAL PLANNING OPPORTUNITIES

A. *Features Favoring Qualified Plans*

In special cases it may be advantageous to roll over amounts from an IRA to a qualified plan, especially for individuals who are at least fifty-five years of age and wish to retire before age 59 ½ or fear termination or severance due to a reduction in the workforce. The advantage stems partially from the special exception to the early distribution penalty (which applies only to distributions from a qualified plan if the participant is over fifty-five years of age upon separation from service as noted above)[126] and partially from the special aggregation rules for determining the taxable amount from an IRA.[127]

In this regard, a special aggregation rule may apply to an individual who has multiple IRAs with after-tax contributions in more than one of them.[128] An individual does not have to limit a rollover from any of these IRAs to the actual taxable amount in that particular IRA.[129] Section 408(d)(3)(H)(ii) of the Code provides a special aggregation rule whereby the part of an IRA distribution being rolled over is considered to come from the taxable amounts of all IRAs of that individual.[130] This overrides the usual application of the pro-rata recovery rules.[131] William E. Massey's article in *Pension & Benefits Week* provides a good illustration of the above rules and how they can be used advantageously:

> A fifty-three year old individual participates in the qualified plan sponsored by his employer-company. The qualified plan accepts rollovers. The individual also has two traditional IRA accounts. One account contains $50,000 which is entirely attributable to deductible contributions and the earnings thereon (i.e. pre-tax contributions); the other account contains $150,000—of which $50,000 is attributable to nontaxable investment in the contract derived from non-deductible contributions

126. *See* I.R.C. § 72(t)(2)(A)(v), (t)(3)(A) (2000); *see also supra* note 102 and accompanying text.

127. *See id.* § 408(d)(3)(H) (Supp. III 2003).

128. *See id.*

129. *See* Vorris J. Blankenship, *Retirement Plans and IRAs: Rollovers of Taxpayer Investment*, J. RETIREMENT PLAN. (CCH), May-June 2006, at 46 & n.73 (citing I.R.C. § 408(d)(3)(A)(ii), (D)(i), (H)(ii)(II)); *see also* ANDY BIEBL, UNDERSTANDING THE 2001 TAX ACT 29-30 (2001) (on file with the Houston Business & Tax Law Journal).

130. I.R.C. § 408(d)(3)(H)(ii).

131. *See id.*

> and $100,000 is attributable to deductible contributions and earnings from all contributions. Based upon the special aggregation rules of § 408(d)(3)(H)(ii), the individual may roll over up to $150,000 of any IRA distributions to an eligible retirement plan. Accordingly, he may roll over the entire amount from his $150,000 IRA to his employer's qualified plan. The $50,000 investment in the contract in the first IRA would be shifted to the second IRA. After the rollover, the individual is considered to have an IRA consisting entirely of nondeductible contributions. He will be able to withdraw funds from that IRA with zero income tax liability and free of the ten percent early withdrawal penalty because that only applies to the taxable amount of such early distribution. Had the individual simply taken a distribution of $50,000 from his IRAs without first rolling the other amounts to the qualified plan, he would have recognized taxable income of $37,500 and owe a penalty of $3,750.[132]

In addition to maximizing the tax deferral and avoiding the ten percent early withdrawal penalty described in the example above, the individual may also later avoid the ten percent early withdrawal penalty if he separates from service after attaining age fifty-five (and requests a distribution before attaining age 59 ½).[133] This exception to the early withdrawal penalty is only available for distributions from qualified plans.[134]

B. *Features Favoring IRAs*

Notwithstanding the above, several features attributable to IRAs may make it advantageous to roll funds from a qualified plan to an IRA. For instance, an IRA is not subject to the same spousal consent rules as a qualified plan.[135] For example, assume the participant wishes to designate a child from a previous marriage as a beneficiary to a portion of his 401(k) plan. The law does not permit him to designate a primary beneficiary other than his spouse unless his spouse expressly consents to such beneficiary designation.[136] A participant may circumvent this requirement imposed on qualified plans by rolling such

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132. William E. Massey, *Planning Possibilities with IRA-to-Qualified Plan Rollovers*, PENSION & BENEFITS WEEK, Mar. 13, 2006 (paraphrased from Illustrations 1, 3).

133. I.R.C. § 72(t)(2)(A)(v) (2000).

134. *Id.*; *see* discussion *supra* Part IV.B.

135. Treas. Reg. § 1.401(a)-20, Q&A (3)(d) (as amended in 2006).

136. *Id.* Q&A (3)(a)(1); *see* I.R.C. § 417(a)(2) (2000).

amounts to an IRA. The case for the rollover to an IRA will be even stronger if the participant is married to an individual who is more than ten years his junior.[137] In such event, the participant may roll over a portion of his retirement account from the qualified plan to an IRA. This will enable him to designate the IRA account to the child (or other beneficiary) without spousal consent and obtain a reduced MRD amount from the qualified plan because his spouse would be the sole beneficiary.[138]

In addition, there may be an opportunity to roll over funds to a Roth IRA.[139] Currently, an individual may roll over a distribution from an IRA to a Roth IRA if the individual's adjusted gross income is $100,000 or less for the year of the distribution or he is not married filing separately.[140] A participant who meets these criteria may roll his retirement account from a qualified plan to an IRA, and subsequently roll his IRA to a Roth IRA.[141] Beginning in 2008, participants may roll directly from the qualified plan to the Roth IRA due to a change made by the Pension Protection Act of 2006.[142] This may be important for a participant who believes a Roth IRA is better suited for his particular situation.

VI. CONCLUSION

As previously mentioned, a decision to roll one's retirement assets from an employer-sponsored qualified plan into an IRA may not always be the best idea. As indicated above, qualified plans have inherent features which are not available in IRAs and vice versa. The various differences in features outlined above between a qualified plan and an IRA should enable one to make a better informed decision concerning whether to retain retirement

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137. *See* discussion *supra* Part IV.A (minimum distribution rules).

138. *See* discussion *supra* Part IV.A.

139. A Roth IRA

> represents a very different tax bargain. No deduction is allowed for the taxpayer's annual contributions, unlike a regular IRA. When withdrawals are made from a Roth IRA, they are free of federal income tax . . . as long as the Roth IRA has been in existence for at least five years and the account holder is at least fifty-nine and one-half years old. Most other features of the regular IRA, including the absence of current taxation of the account's investment profits, apply with equal force to Roth IRAs.

Richard L. Kaplan, *Retirement Funding and the Curious Evolution of Individual Retirement Accounts*, 7 ELDER L.J. 283, 288 (1999) (footnotes omitted); *see* I.R.C. § 408A(d)(3)(A) (2000).

140. *See* I.R.C. § 408A(c)(3)(B) (2000).

141. *Id.*

142. Pub. L. No. 109-280, § 824(a), 120 Stat. 780, 998 (codified as amended at I.R.C. § 408A(e) (2000)).

assets in a qualified plan. The final decision, of course, is a personal matter and will depend upon an individual's particular circumstances and desires, as well as the specific provisions and features applicable to the qualified plan in which he participates. This arena is very complex and highly technical, and it is recommended that the participant consult with a tax advisor before making any final strategic decisions regarding retirement and savings plans.