

## Estate Planning for IRA Distributions

By Claudia Allen

For many people, their largest asset and source of income when they retire is an IRA. And although they were created as retirement vehicles, IRAs are also often the largest asset in a person's estate when he or she dies. Consequently, it is important to plan carefully to reduce taxes owed on IRAs after you die.



The rules on IRA distributions are convoluted to say the least. This article can only scratch the surface in alerting you to some estate planning issues you need to be thinking about as you approach retirement. To maximize the tax benefits of your IRA, you should consult an estate planning attorney.

### Tax-Deferred Growth

The main benefit of traditional IRAs is that earnings are tax-deferred. That means income tax isn't owed on IRA earnings until they're paid out to you or your beneficiary. As a result, those earnings grow more quickly than they would in other investment vehicles.

The primary goal for estate planning purposes is to delay IRA distributions, allowing the IRA to continue to grow tax-deferred, for as long as possible, even after you die.

In general, minimum distributions from your IRA must begin no later than April 1 of the year after the year you turn 70 ½ years old. This is called the required beginning date (RBD). To maximize your estate planning, you need to make several decisions *before* your RBD.

The most crucial decisions are: (1) who your beneficiaries will be, (2) when you will start receiving distributions, and (3) what method of calculation you will use. Each of these decisions affects such matters as how soon your beneficiaries have to start receiving distributions after you die, whether and for how long they can stretch out those distributions, and the amount of income taxes owed (and when).

## Choosing a Beneficiary

Most IRA owners should follow a few basic principles in choosing a beneficiary. First, never designate your estate as your IRA beneficiary. If you do, income and estate taxes will be owed on the entire IRA when you die the same as any other asset of the estate. The advantages of continued tax deferral will be lost.

Second, it is usually best to name your spouse as beneficiary. Your surviving spouse will be able to treat your IRA the same as if it was his or her own. That means it can be rolled over into his or her own IRA (until your spouse's RBD), and your spouse can designate his or her own beneficiary to receive the IRA upon death. That beneficiary can continue to take maximum advantage of tax deferral by stretching out distributions over the beneficiary's lifetime.

Depending on when you start receiving distributions and the method of distribution you choose, the ability to stretch out distributions will be more limited for other beneficiaries. Your best bet may be to designate a young child — such as a grandchild. Although the tax benefits are not as good as if you designate a spouse (because young beneficiaries don't have total control over the IRA like a spouse does), they may still be able to stretch out distributions over their lifetime.

## Other Estate Planning Tools

Depending on your circumstances, you may be able to use one of the following to reduce your estate taxes:

**Charitable donations.** Leaving your entire IRA to charity gives your estate a charitable deduction for federal estate taxes and eliminates income taxes that would otherwise have to be paid on IRA distributions.

You could also designate a Charitable Remainder Trust (CRT) as your beneficiary. CRTs pay income to your heirs for however long you designate (often, until they die), then pay any remaining IRA proceeds to charity. Although your beneficiaries would have to pay income taxes on payments they receive from the CRT, your estate would get a charitable deduction and would not have to pay income taxes on the amount eventually given to the charity.

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**Roth IRAs.** Unlike traditional IRAs, which accumulate tax-deferred earnings, Roth IRA earnings are tax-free. That means there is no federal income tax on distributions from a Roth IRA (whether you have to pay state income taxes depends on the state). The estate planning benefits of a Roth IRA include:

- There are no required minimum distributions. Your Roth IRA can continue to grow tax-free for as long as you live.
- You can continue contributing to a Roth IRA even after you turn 70 1/2.
- There are no minimum distributions for your spouse after you die. After both you and your spouse die, beneficiaries must start taking minimum distributions based on their life expectancies. That means you can stretch out the distributions for continued tax-free growth over three lifetimes (yours, your spouse's, and the beneficiary's).

## Jurisdiction on the Web: Does Having a Website Mean You Can Be Sued Anywhere?

By William R. Jacobs

In the last few years, thousands of businesses have taken the plunge into electronic commerce, and there has been a corresponding rise in the number of lawsuits involving online activities. One of the most important issues that arises as a result is where these companies can be sued. This issue is known in the legal field as “personal jurisdiction.”



Jurisdiction is important to both the plaintiff and the defendant. If you're thinking about suing, you'd obviously rather do it locally than travel to another state. It's less expensive, and hometown juries tend to be more sympathetic to local plaintiffs. These concerns apply equally to companies that have been sued. So what are the rules on when you can be sued in a distant state because you engaged in electronic commerce?

### *The Basics*

There are a number of technical statutory requirements for a court to exercise personal jurisdiction over a defendant from another state. But the issue in most cases comes down to whether the defendant has “minimum contacts” with the state where it's been sued. This is determined by applying a three-part test:

- (1) Whether the defendant “purposefully availed” itself of the privilege of acting in the state,
- (2) Whether the litigation arises from the defendant's activities in the state, and
- (3) Whether the defendant's contacts with the state are substantial enough to make it reasonable for the court to exercise jurisdiction over the defendant.

If the answer is yes to all three of these questions, the court generally may exercise jurisdiction over the defendant.

## *Jurisdiction in Cyberspace*

In cyberspace, these same principles are applied, but with a twist. The question becomes whether a court can exercise jurisdiction over a defendant from another state when its contacts with the state are mostly electronic in nature. As with most legal issues, the answer depends on the facts.

Not many cases have addressed the issue of personal jurisdiction in cyberspace, and the courts almost seem to be making up the rules as they go. But courts that have examined the issue have focused on the nature and quality of commercial activity that the defendant conducts over the Internet. The following three categories of Internet usage seem to be emerging:

- At one end of the spectrum, the defendant clearly conducts business over the Internet by entering into contracts with residents of other states that involve the knowing and repeated transmission of computer files over the Internet. In this situation, personal jurisdiction is proper.
- At the other end of the spectrum, the defendant has a passive website that does nothing more than advertise on the Internet. Personal jurisdiction is not appropriate in these cases.
- In the middle are situations where a defendant has a website that allows a user to exchange information with a host computer. Personal jurisdiction may or may not be appropriate depending on the level of interactivity and the commercial nature of the information exchanged.

### *Some Examples*

Let's look at two cases in which the courts reached different conclusions on the issue of personal jurisdiction in cyberspace.

**Texas resident can be sued in Ohio.** Patterson, a resident of Texas, entered into an online agreement with CompuServe, a computer online service headquartered in Ohio. When the parties subsequently became embroiled in a trademark infringement dispute, Patterson threatened to sue CompuServe. But CompuServe beat him to the punch by filing a lawsuit in Ohio.

The court found that Patterson had sufficient electronic contacts with Ohio for it to exercise personal jurisdiction over him for the following reasons:

- Patterson “purposefully availed” himself of the privilege of doing business in Ohio and intentionally directed his business efforts toward Ohio by entering into a contract with an Ohio company.
- The contract expressly stated it was entered into in Ohio and governed by Ohio law.
- Patterson maintained an ongoing business relationship with CompuServe from which he benefited.
- The litigation arose from Patterson's activities in Ohio because the software allegedly infringed upon was marketed and sold through CompuServe in Ohio.
- Patterson's contacts with the state were substantial enough to outweigh any burden that Patterson would face in defending a lawsuit in a distant state.

**Vermont company can't be sued in Texas.** Mink, a Texas resident, applied for a patent on a computer software program. Stark offered to

market the software for Mink at a computer seminar. Mink gave Stark a full demonstration of the product, which Stark shared with Middlebrook, a Vermont resident, and AAAA Development, a Vermont corporation owned by Middlebrook. Mink sued Middlebrook and AAAA in Texas, alleging they conspired to copy Mink's product.

Mink argued that AAAA's website, which was accessible by Texas residents, created sufficient contacts with Texas for the court to exercise jurisdiction over the company. The website advertised AAAA's sales management software and provided an e-mail address for consumers to correspond with the company. It also offered a printable order form and a toll-free phone number to place orders. It did not have any other interactive features that would allow consumers to order or purchase products and services on-line. The court found that AAAA's website was insufficient to subject the company or Middlebrook to personal jurisdiction in Texas.

### *Some Final Thoughts*

It's important to keep in mind that the law in this area is constantly developing. The issue of personal jurisdiction is so fact-specific that predicting how a particular case will turn out is nearly impossible. Before entering the brave new world of e-commerce, consider whether it's worth the risk of being hauled into court literally thousands of miles away.

## Outside Directors Beware: Are You Meeting Your Duties of Loyalty and Care?

By Thomas P. Glass

Among the corporations that have them, outside directors are typically less likely than inside directors to take an active role in directing and monitoring corporate affairs. This may be due to the fact that, historically, outside directors were less likely to be held accountable for corporate mismanagement.



But that historic trend is changing rapidly. The law does not differentiate between the duties imposed on inside directors (corporate officers and other individuals who work or have worked for the corporation) and outside directors (those who have no current or prior employment relationship with the company). Parties are increasingly willing to lay the blame for corporate losses at the feet of outside directors.

With that in mind, it is more important than ever that outside directors be diligent in meeting their responsibilities to the corporation and its shareholders.

### *Basic Training: Fiduciary Duties*

The law in every state imposes certain "fiduciary duties" on the board of directors. Directors' responsibilities as fiduciaries include the duty of loyalty and the duty of care, both of which are owed to the cor-

poration and its shareholders. Generally, the *duty of loyalty* prohibits directors from:

- taking actions that are adverse to the interests of the corporation and its shareholders, and
- acting for their own benefit at the expense of the corporation.

The *duty of care* obliges directors to take reasonable efforts under the circumstances to ensure that they are adequately informed before making decisions that affect the corporation.

All directors are protected by the "business judgment rule," which provides that they are not liable for harm to the corporation or shareholders caused by actions taken in good faith within their corporate powers. Although theoretically the same standards for imposing liability apply to both inside and outside directors, those standards have traditionally been applied less stringently to outside directors.

For example, when considering whether to approve proposed corporate actions, outside directors were typically allowed to rely on the expertise of corporate officers and professionals hired by the board of directors rather than being required to learn about or investigate the issues themselves.

### *Clear and Present Danger*

But the standards applied to outside directors are becoming more stringent. Failure to attend meetings or to be prepared to vote intelligently on issues are no longer acceptable excuses for outside directors. More often now, they are required to take affirmative steps to educate themselves on issues to be decided by the Board and to investigate proposed actions in order to fulfill their fiduciary duties. If they fail to do so, they risk being successfully sued for any harm that comes to the corporation or its shareholders as a result of their decisions.

So what kinds of decisions might place outside directors in the line of fire? Directors may be held responsible for everything from negligent mishandling of corporate affairs to intentional misappropriation of corporate assets. Some of the more common claims against directors include that they:

- Failed to ensure the corporation's compliance with disclosure requirements under federal and state securities laws
- Improperly profited from the use of corporate property or from transactions entered into with the corporation
- Usurped an opportunity or advantage that rightfully belonged to the corporation
- Profited from the use of insider information

One of the fastest growing claims against outside directors is that they breached their duty of care by failing to discover or correct the negligent or wrongful actions of other directors and corporate officers.

*The risks associated with serving as an outside director are sufficiently severe to justify concern — and in our litigious society you can be sure that they are only going to increase. Your best bet is not to take your duties lightly. If you have any questions about your fiduciary duties, feel free to contact Tom Glass at Strauss & Troy.*



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# NEWS OF THE FIRM

## ATTORNEYS ON THE MOVE

On February 25, 2000, **Thomas Stachler** and **William Jacobs** conducted a seminar entitled "The Fundamentals: Techniques for Success in Civil Litigation in Ohio."



Thomas Stachler



William Jacobs

**Charles Atkins** and **Thomas Stachler** are again teaching a Trial Practice Course at the University of Cincinnati College of Law. The classes began in January and will end in May.



Charles Atkins

On April 4, 2000, **Frank Klaine** and **Joe Braun** presented a program to the administration of the schools in the Great Oaks School System on School Safety Issues and Gun Violence.



Frank Klaine



Joe Braun

**Timothy Theissen** recently spoke at a seminar entitled "Training Workshop for Planning Commissioners, Board of Adjustment Members and Elected Officials," presented by the Kentucky League of Cities and the Kentucky Chapter of the American Planning Association. Tim's session concerned "Due Process Pitfalls in Planning and Zoning Process" covering a number of issues regarding public hearing procedures, *ex parte* contact, and other issues related to due process. The first seminar was held in Ft. Mitchell, Kentucky on April 4, 2000, and two other seminars are scheduled: one will be held in Lexington, Kentucky on June 1; and the other in Madisonville, Kentucky on June 13.



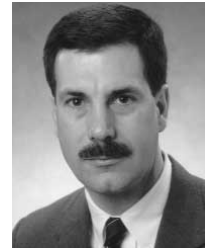
Timothy Theissen

**Anthony Barlow** will conduct a seminar for real estate agents at the Cincinnati Area Board of Realtors on April 25, 2000, entitled "Legal and Title Aspects of House Construction in Ohio." The seminar is part of a course entitled "How to Build a House" which involves other consultants and experts and is put on by the Better Housing League of Greater Cincinnati.



Anthony Barlow

**Paul Calico** will speak at a Lorman Education Services seminar in May on Construction Lien Law in Ohio. The seminar is designed for contractors, owners, developers, subcontractors, suppliers, architects, engineers, lenders, accountants, and other construction professionals who provide goods or services to construction projects. Paul's topic will be Home Construction and Home Purchase Contracts.



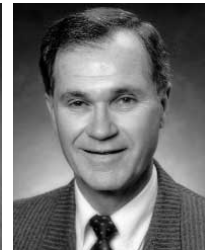
Paul Calico

Strauss & Troy is pleased to report that **Paul Calico**, a partner in the Litigation Department, successfully led a group of 125 homeowners to victory in a six-year battle to have their homes transferred into the school district serving the remainder of the area in which their homes are located. Residents of the Four Mile Road-Sutton Road area of Anderson Township petitioned the State Board of Education to transfer their homes into the Forest Hills Local School District, which serves all other residents of Anderson Township. After numerous hearings and appeals, Ohio's Tenth District Court of Appeals ruled that the transfer was in the best interests of the students involved, and the Ohio Supreme Court dismissed an appeal, thereby ending this lengthy and hard-fought battle. The case received significant publicity, and Paul was interviewed by and quoted in both *The Cincinnati Enquirer* and *The Cincinnati Post* as well as other area publications. We are very proud of the excellent result Paul assisted our clients in achieving.

**Steven Stuhlbarg** and **Charles Melville** co-authored an article entitled "Deal Fairly and in Good Faith - How Could Anyone Refuse?" that was published in the April 2000 edition of *Agency Sales*, the national marketing magazine for manufacturers' agencies and their principals. Mr. Melville and Mr. Stuhlbarg reviewed and commented upon a recent case in which the court held that there was a violation of the covenant of good faith and fair dealing by a principal who unfairly terminated its contract with a sales representative.



Steven Stuhlbarg



Charles Melville

# CLIENT SPOTLIGHT

## CBS Personnel Services

### *Our History:*

With just five years of permanent placement and recruiting experience with a regional executive search firm, Bob Brown, president and CEO of CBS Personnel Services, believed he could build a leading staffing and recruiting business. He founded the company from the philosophy that “the customer is always right, and we must continually exceed our customers’ expectations.” His business model was concise and clear, “hire the best,” and work hard each day for the customer. The culture of the business was based on personal values and fierce loyalty to clients, employees, and vendors.

In 1970, Bob started an executive search and permanent placement company called Corporate Business Systems in downtown Cincinnati. As his hometown operations quickly grew, Bob shortened the company name to its acronym, CBS, and added Personnel Services, to better communicate the company’s offerings.



### *Our Progress:*

After adding the temporary staffing and recruiting division, Bob expanded into other niche services, added employees, and opened several other locations in Dayton, Ohio. Today, the newly renovated corporate offices, called The CBS Personnel Center, reside at Fourth and Elm Streets, in what was formerly known as the Cincinnati Convention Place Mall.

### *Our Growth:*

With more than 55 offices, over 800 internal employees in Ohio, Indiana, and Kentucky, and serving greater than 3,000 client

companies and 18,000 contract workers, Bob Brown realizes his vision of a successful staffing and recruiting business. CBS Personnel Services is the regional leader in providing full-service staffing, recruiting, human resources consulting, and Professional Employer Organization (PEO) services, sometimes referred to as employee leasing. Bob’s business has grown to approximately \$300 million in 1999 net annual sales. More than 120,000 W2’s were processed and sent during the same year.

Employee Management Services, the newest division, is the Professional Employer Organization. Employee Management Services sells the outsourcing of all human resources, risk management, payroll, safety consulting, benefits, and benefits management. This service is very valuable to small to medium sized companies.

CBS Personnel’s growth can be attributed to a team effort driven by “hiring the best,” maintaining a competitive edge by providing a higher quality and quantity of human resources services, and setting industry trends.

For 30 years, Bob Brown has maintained a core executive management team, customer, and vendor relationships that have helped him achieve his long-term objectives and goals. He prides himself on many years of leading regional growth and sustained success of his business. He provides personal leadership and direction to his expanding management teams, as well as the enjoyment of achieving his entrepreneurial dream.

### *Our Future:*

CBS Personnel Services intends to maintain its world-class reputation and leading status in the region. New business strategies, including an active Internet initiative, future acquisitions, expansion of services, streamlining operations, and adding employees, are on the horizon for CBS Personnel.