

## Pete's Posts



Pete Benenati

Board Certified Estate Planning & Probate Law  
Texas Board of Legal Specialization

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### Trust Income Tax Issues

**For certain trusts**, the maximum income tax rate on undistributed income is 39.6%. In simple terms, the rate will apply to all income other than capital gain income above approximately \$11,950. Thus, if the beneficiary of such a trust is in a lower income tax bracket, it may make sense to distribute some income to that beneficiary. However, before making such a distribution, many factors should be considered, such as the financial situation of the beneficiary, the maturity of the beneficiary, and whether the distribution will cause problems for the beneficiary in some way.

This issue, and many others that can affect your assets, is why it is important to meet with your attorney, CPA, financial advisor, or all three, on an annual basis to determine the best tax planning. The Benenati Law Firm maintains an annual meeting list to address business and tax planning options with our clients. If you would like to be added to that list, please let us know.

**Severance Payment Update — The Supreme Court has ruled** that severance payments **ARE** subject to FICA and Medicare taxes because the payments are considered to be remuneration for services and are not linked to the receipt of state unemployment benefits. (See previous article posted at [www.benenatilaw.com](http://www.benenatilaw.com))

**Inherited IRA's — In Texas and many other states**, IRA's are protected from the claims of creditors and in bankruptcy. Your IRA or one inherited from a spouse is protected. However, a recent case raised concerns whether an IRA inherited from someone else is protected in bankruptcy. The Supreme Court recently ruled that IRA's inherited from someone other than a spouse are **NOT** protected from the claims of creditors in bankruptcy cases. The court stated that these IRA's do not meet the criteria of retirement funds set aside by an individual for the day they stop working.

As a planning option, it may make sense to name a trust as beneficiary of the IRA. A trust offers protection from creditors and could be drafted so that the value of the trust will not be subject to estate tax when the beneficiary dies.

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