

How to Beat the New Mortality Table

Sooner or later, all of our estate planning clients will die. If we could accurately predict their dates of death, we could help them save a lot of gift and estate taxes. This is because there are planning techniques that work best precisely when the IRS mortality table is wrong, i.e., when you can reasonably bet that a particular person will live much longer or else die much sooner than the table suggests.[1]

"In the long run, we are all dead."
— John Maynard Keynes

"If you live to the age of a hundred, you have it made because very few people die past the age of a hundred."
—George Burns

Internal Revenue Code §7520 requires that the U. S. Department of the Treasury prescribe a mortality table for valuing life contingencies such as life annuities, remainder interests, reversions, etc., and that the table be updated at least every 10 years. Accordingly, the IRS recently issued a new mortality table, referred to as Table 2000CM, effective May 1, 2009 (with certain gift tax transition rules). Basically, the updated table reflects recent U. S. experience of lower death rates and greater longevity. With longer life expectancies, the values of life estates and annuities increase, and the values of remainder interests and reversionary interests decrease. Thus, where an estate planning technique includes a gift component of a life contingency such as a life estate or remainder interest, transfer taxes are reduced when the mortality table causes an understatement of the value of the gift component compared to actual experience. Some clients, especially those with longevity in their family, can plan to beat the table by outliving their life expectancy. Other clients may find their health situation will allow them to "beat the table" in the other direction, with a life expectancy shorter than the table would suggest. Although a person who is "terminally ill" may not use the IRS table, if a person is certified by a physician as having at least a 50 percent probability of surviving one year, then he or she is not considered terminally ill.[2] For better or worse, many clients will find that their life expectancy is highly likely to be longer or shorter than the IRS table predicts. In such cases, the planner should consider taking advantage of the disparity between the table and reality.

So how accurate is the new Table 2000CM? Not very, for one simple reason: the table includes all Americans, without distinction by gender, race, affluence, health, lifestyle choices, or other statistically significant health determinants. Therefore, it even includes a certain number of people who are terminally ill.[3] There are measurable differences among populations when other factors are considered, and these differences can be dramatic. A common rule of thumb is that a female's life expectancy is roughly the same as a male's who is five years younger. Similarly, a Caucasian's life expectancy is roughly the same as an African-American's who is five years younger.

Thus, the table tends to understate the life expectancies of women and overstate the life expectancies of men; to understate the life expectancy of Caucasians and overstate the life expectancies of African-Americans; and, of course, to understate the life expectancies of healthy people and overstate the life expectancies of unhealthy people.

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Moreover, since certain population groups have higher mortality rates, there are fewer of them remaining in the pool at higher ages. Thus, at higher ages, the pool as a whole includes relatively more women and more Caucasians. The consequence is that the table then tends to understate the life expectancies of women less and overstate the life expectancies of men more; and to understate the life expectancies of Caucasians less and overstate the life expectancies of African-Americans more.

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In the past, it was mostly guesswork. If a client had recently undergone underwriting for an insurance policy, there might be some data about his or her health and insurance rating to indicate some variance from the national norm. And certain Web sites generated free reports, varying widely in result and accuracy, worth little.

Recently, however, individualized life expectancy calculations, based on scientific modeling, have become available. These are variously known as a Life Expectancy Analysis, Life Expectancy Evaluation, or Longevity Curve Report. For a modest fee, typically ranging from $100 to $750 (depending on the depth of the analysis), a client can contact one of a number of companies engaged in this business,[4] provide appropriate medical information and family history, and receive a personalized analysis of the client's mortality probabilities.

Modern technology has given planners ever more sophisticated ways to analyze potential outcomes for clients. Since beating the mortality table can save considerable gift and estate taxes, be prepared to add personalized life expectancy evaluations to your bag of estate planning tools.

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Notes

1. Some techniques betting that the measuring life will live longer than the table include: Qualified Personal Residence Trusts (QPRT), Grantor Retained Annuity Trusts (GRAT), Common Law Grantor Retained Income Trusts (GRIT), and Charitable Remainder Trusts (CRT), especially a CRT with a high annual payout minimizing the remainder interest. Some techniques betting that the measuring life will die sooner than the table include: Private Annuities, Self-Cancelling Installment Notes (SCINs), and Charitable Life Contingent Lead Annuity Trusts (CLAT). It is beyond the scope of this column to explain any of these techniques, which are well documented elsewhere. The point is that any technique that can "beat the table" can pay off for the client, but there is a need on the front end to assess the probability of accomplishing that end.

2. Treasury Regulation sections 1.7520-3(b)(3), 20.7520-3(b)(3)(i), and 25.7520-3(b)(3) prohibit the use of IRS mortality tables for an individual who is "terminally ill," which means having at least a 50 percent probability of dying within one year. A person who survives by at least 18 months is presumed not to be "terminally ill," rebuttable only by clear and convincing evidence.

3. As one author has pointed out, it is ironic that the terminally ill, who are the very people who are not allowed to use the mortality table to value contingent life interests, are the ones who skew the table for everyone else. Kevin J. McGrath, "Playing the Mortality Tables," *Tax Analysts Practice*, March 24, 2009.

4. Some of the companies providing Longevity Curve Reports include: 21st Services LLC, of Minneapolis, Minn. (www.21stservices.com); Fasano Associates, of Washington, D.C. (www.fasanoassociates.com); American Viatical Services (AVS), of Kennesaw, Ga.; Examination Management Services, Inc. (EMSI), of Irving, Texas, and Scottsdale, Ariz. (www.emsinet.com); ISC Services, of Clearwater, Fla. (www.iscservices.com); Advanced Underwriting Solutions, of Watkins, Colo. (www.advancedunderwriting solutions.com); Tensor Life Underwriters LLC, of New York, New York; and Global Life Underwriting, of Torrance, Calif. (www.globallifeunderwriting.com).

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References available upon request.