2020 Begins with Significant Changes to Retirement Account Rules

January 21, 2020

On December 20, 2019, President Trump signed into law the *Setting Every Community Up For Retirement Enhancement Act of 2019* (the "SECURE Act"). The SECURE Act is a sweeping piece of legislation that changes retirement planning in substantial ways.

An economically valuable, often essential, component of estate planning is planning for non-probate assets, including retirement accounts. Often, IRAs and other tax deferred retirement accounts are among the largest assets held by individuals. Therefore, planning for the distribution of retirement accounts following death is a crucial part of planning, to fulfill the individual's goals and to avoid a significant tax liability by the intended beneficiaries. Many of the planning techniques used prior to 2020 will need to be revisited and revised in light of this legislation.

Prior to the SECURE Act, individuals were able to leave their retirement funds in 401(k)s, IRAs and ROTH IRAs to "designated beneficiaries" (a technical term), whom pursuant to estate planning documents and carefully drafted beneficiary designations, would take distributions spread over their lifetime. This was called the "stretch" and had obvious income tax benefits. The "stretch" has been largely eliminated by the SECURE Act. For the most part, when a plan participant or IRA owner dies after December 31, 2019, the funds from his or her retirement accounts must be completely paid out over ten (10) years. If the individual failed to name a designated beneficiary, then the funds must be paid out within 5 years. The only "eligible designated beneficiaries" who may continue to "stretch" payouts over their life expectancy are: the surviving spouse, a minor child (until he or she reaches majority, and then must take the remainder of the distributions within 10 years of reaching majority), disabled or chronically ill individuals (terms specifically defined in the IRC) and any individual who is not more than 10 years younger than the participant or IRA owner. The relatively rapid payout of often hefty sums to the majority of retirement beneficiaries will lead to substantial income tax liability, which must be carefully considered as part of estate planning post SECURE Act.

Additionally, the SECURE Act removes the age cap for contributions to an IRA. This is an acknowledgment that Americans are working later in life, and faced with their looming retirement, may earnestly want to continue contributing to their accounts. Beginning this year, anyone who earned has income may contribute to an IRA. (ROTH IRAs did not have age limits for contributions; this remains unchanged.)

Other important changes that the SECURE Act makes to retirement plans and IRAs, which will affect individuals include:

- Increasing the mandatory distribution age (RMDs) from 70½ to 72. Prior to the SECURE Act, participants were required to begin receiving payments from their retirement

accounts in the year they reached age 70½, or the year they retire. Recognizing the current life expectancy and that fact that many work well past traditional retirement age, the Act increases the age to 72. This gives individuals one or two years of additional tax deferral.

- Coverage of Long Term Part Time Workers. Effective 2021, employers may not prevent part time workers, who work at least 500 hours over three consecutive years, and otherwise meet certain requirements, from participating in their company's 401(k) Plan.
- Penalty Free Distributions for birth or adoption related expenses up to $5,000. These distributions will still be taxable, but they will not be subject to the prior law's 10% early withdrawal penalty.
- Penalty free withdrawals from 529 Plans. Beginning in 2022, distributions to pay student loan debt are treated as qualified costs; they will not be subject to tax.
- Lifetime Income Disclosure. Plan sponsors who offer annuity investments must provide a written lifetime income statement to participants not less than annually, which will provide an estimate of monthly payments if benefits were paid as a qualified joint and survivor annuity or a single life annuity.

The broad and lofty goal of the SECURE Act is to aid Americans, who are now living and working longer, as they plan for their retirement. It removes some impediments to retirement savings, for example removing the IRA age limitation and extending the beginning age for RMDs, but it also imposes significant new challenges for both account holder and his or her advisor. With the sweeping changes, in particular the loss of the "stretch" payout, it is incumbent upon qualified plan participants and IRA owners to review their estate planning documents to avoid negative tax results to their beneficiaries.