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Is Your Estate Plan Secure with the New SECURE Act?

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The Setting Every Community Up for Retirement Enhancement (SECURE ACT) is intended to help people save for retirement. Most significant are the changes to Individual Retirement Accounts (IRAs), which could help many older Americans save even more for retirement. But there are also some benefits that have been lost.

That said, the SECURE Act will most likely require a change in strategy for many estate plans to be able to take advantage of some significant tax planning opportunities.

Although the SECURE Act consists of some 29 separate provisions, a few of its key components, and those most likely to affect your estate plan are included here.

When Does It Take Effect? (Hint: It already is.)

The SECURE Act was signed into law on December 20, 2019 and the new rules apply to those who die after December 31, 2019.

IRAs that have been inherited from a participant who died before January 1, 2020, should be grandfathered and thus free from the new SECURE Act requirements; however, there is a provision that would apply the SECURE Act payout requirements to a successor designated beneficiary when a designated beneficiary dies before life expectancy.

RMDs Pushed Back to 72 Years Old (Required Minimum Distribution)

Before the SECURE Act, the law provided that individuals were required to take minimum distributions on qualified retirement plans beginning in the year the individual turned 70 ½ years old. If an individual failed to do so, steep penalties were assessed.

The new SECURE Act provisions pushed back the age at which retirement plan participants must begin taking RMDs, from 70½ to 72 years old (applying to those who are not 70½ by the end of 2019). Therefore, those individuals can now wait to take RMDs until 72 years old.

This could be a benefit to people who were not yet age 70½ on December 31, 2019 and who are not in need of income from their IRAs/retirement plans.

The act also eliminates the maximum age limit for contributing to a traditional IRA.

IRA Owners to Contribute Indefinitely

Before the SECURE Act, individuals were barred from contributing to traditional IRA plans after turning 70 ½ years old.
However, the SECURE Act provisions eliminated the 70 ½-year-old age limit for contributions. Therefore, after the passing of the SECURE Act, individuals can continue to contribute wages to a traditional IRA for as long as they continue working (earned income), thereby effectively allowing traditional IRA owners to continue making contributions indefinitely.

IRA to be Paid Out Within 10 Years of Death

Perhaps the most talked about SECURE Act provision amongst estate planning attorneys, and hence its more in-depth discussion regarding how it may affect your planning, are the provisions nearly eliminating the stretch IRA.

Before the SECURE Act, stretch IRAs and conduit trusts were common estate planning tools used to defer IRA distributions to a beneficiary over a long period of time (more specifically throughout the beneficiary's lifetime). These estate planning and tax planning strategies provided significant tax benefits by deferring income tax, permitting the IRA balance to compound income, tax free and potentially for decades, thus allowing assets to be paid out over the beneficiary's life expectancy.

However, the SECURE Act effectively eliminates the stretch IRA option (except to spouses and a few individuals, as further discussed below) by requiring the IRA be paid out within 10 years following the account holder's death and eliminating annual RMDs during the 10-year period. Therefore, after the SECURE Act, an entire inherited IRA account balance must be emptied by the end of the 10th year after the holder's death, by which point the funds would be taxed (with notable exceptions below). This new law is effective with respect to retirement account owners that pass away after December 31, 2019.

How might this affect your estate plan? The painfully obvious effect is that this elimination of stretch will force the payout of the entire IRA over a much shorter period of time than the plan holder originally intended – 10 years versus the span of the beneficiary's lifetime (which could have been decades). Not only does this give the account less time to accumulate interest within the 10 years, but this could also result in higher payouts to beneficiaries within those 10 years, thereby accelerating income and possibly causing beneficiaries to be bumped into a higher tax bracket. This change may also result in beneficiaries receiving much more money at once (or within a shorter period of time), which could very well be contrary to what the deceased desired for that specific beneficiary.

Some Beneficiaries Still Maintain Stretch IRA Benefits

Who is exempt from this new SECURE Act rule, thereby allowing them to maintain distributions past the ten-year period? These special individuals are referred to as "designated beneficiaries" and include:

- Surviving spouses
- Certain disabled and/or chronically ill individuals
- Beneficiaries that are no more than 10 years younger than the deceased account holder
- Minor children

Moving Forward

We understand this is a lot to take in and our experienced estate planning and tax planning attorneys work collaboratively with you and your financial advisors when needed to help keep your intended plans intact. We have already helped existing and new clients avoid adverse tax consequences and set plans in place to ensure asset protection for you and your beneficiaries.

We look forward to serving you & wish you the best

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