Details of the SECURE Act: Provisions Related to Attainment of Age 70½

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SECURE Act: Age 70½ Provisions

In late December of 2019 President Trump signed into law a budget bill to fund the government for the remainder of the fiscal year. Included as an addition to the bill was the SECURE Act (Setting Every Community Up for Retirement Enhancement Act of 2019). The intent of the Act is to amend the Internal Revenue Code of 1986 to encourage retirement savings.

Section 107 of the Act removes the age 70½ restriction for traditional IRA contributions and reduces the limit for charitable contributions for some individuals.

Prior to the SECURE Act, Internal Revenue Code Section 219(d)(1) prohibited individuals who attained age 70½ by the end of the taxable year from contributing to a traditional tax-deductible IRA. However, the SECURE Act repeals this provision of the Code, allowing individuals who are 70½ or older to make a contribution to a traditional IRA (provided they still meet other requirements of the Code, including having earned income). This change now makes traditional IRAs accessible to older individuals, the same as Roth IRAs and 401(k)s, which do not have an age limit on contributions.

In addition, the Act amends the Code provision for IRA distributions for charitable purposes. Under the Code prior to amendment, an individual could take an IRA distribution of up to $100,000 without including it in gross income as long as the distribution was contributed to a qualified charity. Under the SECURE Act, the allowable tax-free withdrawal amount from an IRA for a qualified charitable distribution is reduced for individuals over the age of 70½.

The excludable amount is determined by reducing $100,000 by the excess of --

(i) the amount of tax deductions allowed to the taxpayer for all taxable years on or after the date the taxpayer attains age 70½, over

(ii) the aggregate amount of reductions for all taxable years preceding the current taxable year.

<u>EFFECTIVE DATE</u>: These changes apply to contributions and distributions made for taxable years after December 31, 2019.

Section 114 of the Act increases the age for Required Minimum Distributions (RMDs) from 70½ to 72.

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Under the new provision, RMDs from traditional IRAs and qualified plans, including 403(b) and 457(b) plans, are due no later than April 1 of the calendar year following the later of the calendar year in which the employee attains age 72, or the year in which the employee retires. (There is still an exception for 5% owners who now must begin taking RMDs by April 1 of the calendar year following the calendar year in which they attain age 72 regardless of employment status).

Also, the language in the Code regarding the timing of distribution for an employee who dies before his entire interest is distributed is amended so that if the designated beneficiary is a spouse, the spouse will be required to start distributions no earlier than the date on which the employee would have attained age 72 (instead of age 70½).

EFFECTIVE DATE: This section of the Act is effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70 ½ after such date. Individuals who attain age 70½ on or before December 31, 2019 must take their RMDs under the prior rules and must continue to take them each year (they will not stop and then restart). Also, it is important to note that an individual who attains age 70½ prior to December 31, 2019, but has not been taking an RMD because they are still employed, will need to start the first RMD by April 1 of the year after they terminate employment, even if they are not yet age 72, since the timing of whether the old or new rule applies is contingent on when the individual turned age 70½ (see 2nd example below).

EXAMPLE: Sharon was born on December 10, 1949 and is retired from a company that sponsors a 401(k) plan in which Sharon still maintains an account. She will be 70½ on June 10, 2020. Under the old rules, Sharon would need to take her first RMD no later than April 1, 2021. However, because she will attain age 70½ after December 31, 2019, she is subject to the new rules and won't be required to take her first RMD until April 1, 2022, since she will turn 72 on December 10, 2021.

EXAMPLE: Michael is not a 5% owner. He was born on March 10, 1949, so he turned 70½ on September 10, 2019. However, because he is still working, he has not yet been required to take an RMD. Michael plans to terminate employment on May 1, 2020. His first RMD will be due by April 1, 2021 because the timing of his RMD is determined under the old rules. So even though he will turn 72 in 2021, he is not subject to the new rules which would have delayed his distribution due date until April 1, 2022.

These two sections of the SECURE Act are intended to recognize that as life expectancy has increased, people are working longer and should be allowed to continue to be able to make IRA contributions and put off RMDs a little longer. These are welcome changes and should be easy to administer going forward.

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