Post Polak

Welcome to Edition 17 of The Newsletter from Scott H. Novak, Attorney at Law. The Newsletter is designed to bring timely and interesting topics to accountants and attorneys. Comments and suggestions are always welcome. Feel free to call or write at any time.

You have probably been hearing about the SECURE Act through seminars and articles. I thought it might be helpful to dedicate this edition of the newsletter to some of the provisions of the Act that you may come into contact with.

1. **<u>Required minimum distribution date</u>**. Under prior law, the required minimum distribution date for defined contribution plans and IRAs was the April 1st following the year in which the participant attained the age of 70 ½. That age has been changed to age 72 for distributions required to be made after 2019 to those who attain age 70 ½ after 2019.

2. **<u>Age for Traditional IRA contributions</u>**. Under prior law, no deductible contributions could be made to a traditional IRA after age 70 ½. This provision is repealed under the new law, such that as long as an individual has compensation, that individual can contribute to a traditional IRA and deduct the contribution, subject to the deduction rules that applied previously. So as long as an individual in working and earning compensation, he or she can continue to contribute to a traditional IRA.

3. **<u>Coordination with Qualified Charitable Contributions</u>**. An IRA owner can still make a contribution to a charitable organization after age 70 ½ and exclude the income that otherwise would have been taxed to the IRA owner. However ..... if the IRA owner has made contributions to the IRA past age 70 ½, the amount of those contributions must be included in income in the year of the qualified charitable contribution. For example, assume that an IRA owner contributed $3,000 per year at ages 71, 72 and 73 and took deductions for the contributions (total of $9,000). At age 74, the owner decides to make a qualified charitable contribution of $50,000. Ordinarily, the $50,000 would be entirely excludible from income. In this situation, however, the owner must include the $9,000 in income in the year that the qualified charitable contribution is made. If the IRA contributions exceed the qualified charitable contribution, the amount to be added to income is the amount of the qualified charitable contribution.

4. **<u>Exception to the 10% early-withdrawal rule for birth or adoption</u>**. If a qualified plan participant withdraws funds from the plan prior to age 59 ½, the participant must pay, in addition to the tax, a 10% penalty. There are several exceptions. A new exception applies to a qualified birth or adoption when the distribution occurs after 2019. The penalty will be waived on up to a $5,000 distribution. The tax will still be due, but up to $500 in penalties can be avoided. An eligible distribution for this purpose is one that occurs up to a year after birth or the finalization of an adoption.

The adoptee (other than a child of the taxpayer's spouse) must be either under the age of 18, or a person who is physically or mentally disabled, incapable of self-support.

5. **No more stretch IRAs for most beneficiaries**. Under the pre-2020 rules, a non-spouse designated beneficiary had two choices relative to inherited retirement plan benefits where distribution had not yet started. Either the benefits had to be completely distributed within 5 years of the participant's death or the beneficiary could elect to have the benefits distributed in annual installments over the life expectancy of the beneficiary. Doing the latter "stretched" the retirement payout (and the taxation of the benefits) potentially over many years. If the participant had reached his or her required beginning date before the date of death, the beneficiary had to take the account balance at least as rapidly as under the method the participant was using to calculate distributions. Under the SECURE Act, these rules are replaced by a 10-year payout in most instances. To understand how the rules apply, it is important to look at some definitions:

- **Designated Beneficiary** - an individual who is named as a beneficiary by the participant or by the plan, or a trust named as the beneficiary if the trust meets the IRS requirements to be considered a see-through trust.

  Old Rules: A spouse who was a designated beneficiary could "step into the shoes of" the participant under the old rules. A non-spousal designated beneficiary could take benefits as described above.

  New Rules: A non-spouse designated beneficiary, unless an "Eligible Designated Beneficiary," must take distributions by the end of the year that contains the 10th anniversary of the participant's death.

- **Eligible Designated Beneficiary** - one of the following 5 categories:

  1. The surviving spouse of the participant.
  2. The minor child of the participant.
  3. A disabled beneficiary.
  4. A chronically ill individual.
  5. A beneficiary who is less than 10 years younger than the participant.

  New Rules: An Eligible Designated Beneficiary can use the life expectancy payout method. Upon the death of an Eligible Designated Beneficiary, the 10-year payout rule applies. Upon a minor child reaching majority, the 10-year rule applies.

- **Non-Designated Beneficiary** - Everything else. Some examples might be the participant's estate, a charity, a trust that is not a see-through trust. If the participant dies before the required beginning date (RBD) for minimum required distribution (MRD), a Non-Designated Beneficiary must withdraw the entire account by the end of the year that contains the 5th anniversary of the participant's death. If the participant dies on or after the RBD, the Non-Designated Beneficiary must withdraw the remaining benefits over what would have been left of the participant's life expectancy had the participant not died. These rules remain unchanged from before.

These rules potentially change some clients' estate plans. For example, if your client created a trust to take advantage of the lifetime payout rule, it is important to revisit that client's estate plan to see if the changes brought about by the SECURE Act necessitate amendments to their estate plan. Alerting your clients to the new rules is a good conversation starter that may lead to deepening of your trusted advisor relationship. Please feel free to call with any questions regarding the SECURE Act or any other matter.

Post Polak, P.A.
425 Eagle Rock Avenue, Suite 200, Roseland, NJ 07068
(973) 228-9900