

LEGAL UPDATE

IRS Issues Important Guidance with Respect to Required Minimum Distribution Regulations

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The SECURE Act made significant revisions to the required minimum distribution rules under Internal Revenue Code (Code) Section 401(a)(9) that apply to defined contribution (*e.g.*, 401(k) plans) and 403(b) plans, individual retirement accounts and individual retirement annuities (IRAs), Roth IRAs and eligible deferred compensation plans under Code Section 457(d). Among these changes were the elimination of the “stretch IRA” provisions that allowed beneficiaries to be paid over their life expectancy upon the death of the settlor of the IRA, and the extension of the five-year payout deadline to a 10-year payout deadline. In February 2022, the IRS issued proposed regulations implementing the SECURE Act’s modifications, and two of its interpretations generated significant public comment.

In the proposed regulations, the IRS took the position that if a participant or IRA owner dies after his or her required beginning date - whether or not payments have begun - so that the 10-year payout period applies to a beneficiary, distributions to the beneficiary must begin to be paid (or continue to be paid) on an annual basis rather than permissibly being deferred until year 10, based on the beneficiary’s life expectancy. Similarly, if an eligible designated beneficiary dies (or a minor reaches the age of majority - age 21 in the proposed regulations) and distributions must be completed within a 10-year period, those distributions must be paid annually.

In Notice 2022-53, the IRS announced that final regulations regarding required minimum distributions under Code Section 401(a)(9), and Code Section 408 with respect to IRAs, will apply no earlier than the 2023 distribution year. Additionally, IRS indicated that a plan that failed to make a specified required minimum distribution in 2021 or 2022 in accordance with the proposed regulations would not be treated as failing to satisfy Code Section 401(a)(9),

and a taxpayer who did not take a specified required minimum distribution in 2021 or 2022 will not be subject to the 50 percent excise tax for failing to receive a required minimum distribution. If a taxpayer already paid an excise tax for a missed RMD in 2021, he or she could file for a refund. Solely for purposes of Notice 2022-53, a “specified RMD” is any distribution that, under the interpretation in the proposed regulations, would be required to be made in 2021 or 2022 under a defined contribution plan or IRA in the year in which the employee or designated beneficiary died if that payment would be required to be made to:

- i. a designated beneficiary of the employee (or the IRA owner) if the employee (or IRA owner) died in 2020 or 2021 after the employee’s (or IRA owner’s) required beginning date and the designated beneficiary is not taking lifetime income or life expectancy payments; or
- ii. a beneficiary of an eligible designated beneficiary if the eligible designated beneficiary died in 2021 or 2022 *and* that eligible designated beneficiary was taking lifetime or life expectancy payments.

This transitional relief may be an indication that the IRS is not considering modifying its position on the timing of distributions during the 10-year period with respect to the death of an employee, IRA owner, or eligible designated beneficiary, or it may simply be a recognition by the IRS that taxpayers did not anticipate the IRS’s taking the position it adopted in the proposed regulations.

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