SECURE Act Top 10 List

Name: Setting Every Community Up for Retirement Enhancement
Signed: December 19, 2019

Hessler Legal Group SECURE Act Top 10:

10. Kiddie Tax Changes
9. Employers Not Required to Choose Lowest Cost Plan.
8. Penalty Free Withdrawals for Having or Adopting a Child
7. 529s Can Pay Student Loans
6. Trusts Need Attorney Review
5. Tax Credits for Employer Retirement Plans
4. MEPs En Vogue
3. RMD is 72
2. Variable Annuities Allowed in 401ks
1. Changes to the Stretch IRA

1. Changes to the “Stretch IRA”

The new 10-year rule only applies to accounts of benefactors who die in 2020 and beyond. Current beneficiaries of inherited IRAs and 401(k) plans will still be allowed to withdraw the required minimum distributions over their life expectancy. The 10-year rule will take effect on Jan. 1, 2020, which means anyone who died by Dec. 31, 2019 will **not be affected**.

Exceptions: (1) the surviving spouse of the deceased account owner, (2) a minor child of the deceased account owner, (3) a beneficiary who is no more than 10 years younger than the deceased account owner, or (4) a chronically-ill individual (as defined).

Practical Point: It’s a 10-year rule, not equally over 10 years. If you are near retirement, wait to take the distributions in years where you have less earned income. Work with your advisor on how to take advantage.

Buying Life Insurance: Family member wants to leave an IRA to family. Because of the new rules and tax considerations. Retired family member can buy life insurance and name the family members as beneficiaries. The life insurance proceeds are tax free and the retired family member pays less tax. Tax is on the premium paid not the larger life insurance benefit.

2. **Variable Annuities allowed in 401k plans**

Annuities can be investment options in 401ks. Fiduciary rules precluded this before. The “guaranteed” income aspect of annuities is where the attractiveness lies for conservative investors.

Practical Point #1 : Employers will be protected from being sued if the insurer they choose to make annuity payments doesn’t pay claims in the future.

Practical Point #2: The disadvantages of this, especially if you choose to transfer your entire balance to the annuity, are: (1) You are locking in today’s low interest rate for life. When interest rates rise, your annuity payment will not be any larger. (2) You are making an irrevocable decision. If you choose the annuity with the largest monthly payout (single life annuity) and you pass away the next day, the insurance company keeps the entire balance. (3) If you have an emergency and need a lump sum amount, you are out of luck. Again, this is an irrevocable decision, so no other payment to you is possible.

3. **Required Minimum Distribution Age is 72 and not age limit on contributions**

RMD was 70 ½ in the Chinese year of the dog on Tuesday afternoon during the solstice outside Chick-Fil-A. Nobody understood it or why (it has to do with life expectancies). RMD age is now 72 and there is no age limit to making IRA contributions.

Practical Point #1: People who turned 70.5 in 2019 can wait to withdraw their RMD until April 1, 2020. They’ll then have to take another RMD by the following Dec. 31, and every Dec. 31 thereafter. No waiting until April of the next year. *Marketwatch, Pub. Jan. 4, 9:11 am*

Practical Point #2: Clients can contribute to an IRA and even a Roth IRA if they have earned income. This change has very practical tax implications. For a married couple $14,000 per year.

4. **Multiple Employer Plans (MEPs) are here for your small business.**

The one bad apple rule precluded previous businesses from participating in MEPs. If one employer did not meet the rules of the game, all failed. The “common characteristic” rule is gone. Part-time workers are now eligible if they have worked for 3 years and have 500 service hours each of the three years.

Date this take effect: January 1, 2021

DOL: Must clarify rules of the MEP before proceeding, hence the delay

5. **Tax Credit for employers to auto enroll workers.**

Richard Thaler is a noted behavioral economist and came up with this idea many moons ago. This has led to increased retirement savings of approximately $30B. Small employers will get a tax credit to offset the costs of starting a 401(k) plan or SIMPLE IRA plan with auto-enrollment, on top of the start-up credit they already receive. Automatic enrollment percentage increased. Now employers can automatically enroll employees to contribute up to 15% of income instead of just 10%.

Practical Point #1: **Absolute MUST:** Tax credit for a small business establishing a plan increases from $500 to up to $5,000

Practical Point #2: Tax credit for adopting an auto-enrollment feature ($500)

6. **Review your Trusts**

If you have clients that set up trustee to trustee transfers to take advantage of stretch IRA provisions, you need to revisit those trusts.

7. **529 Plan withdrawals allowed for qualified student loan repayments (up to $10,000 annually).**

8. **Withdrawals up to $5,000 in 401k for defray the costs of having or adopting a child.**

Exception: Applies to any distribution from the retirement account within one year from the date of birth or adoption. Repayments to the plan are allowed and can be repaid (re-contributed back to the retirement account). The repayment will be treated as an eligible rollover.

Practical Point: $5,000 is the lifetime limit, not per year. Applies to children age 18, or physically or mentally disabled and incapable of self-support

9. **Employers are not required to choose the lowest-cost plan.**

Practical Point: Employers can work with their advisors and not necessarily with the lowest cost provider of services like Fidelity or Vanguard. **Service Matters again.**

10. **Kiddie Tax: Changes tax to parents' tax bracket instead of trust tax**

Practical Point: Trust taxes are significantly higher than individual rates.

RMD Examples (*Marketwatch*)

Example 1: Harold dies in 2020 and leaves his IRA to designated beneficiary Hermione, his sister, who was born eight years after Harold. Hermione is an eligible designated beneficiary. Therefore, the balance in the inherited IRA can be paid out over her life expectancy. If Hermione dies before the account is exhausted, the remaining balance must be paid out within 10 years after her death.

Example 2: Ingrid dies in 2020 and leaves her IRA to designated beneficiary Ignacio, her brother, who was born 12 years after Ingrid. Ignacio is not an eligible designated beneficiary because he is more than 10 years younger than Ingrid. The balance in the inherited IRA must be paid out within 10 years after Ingrid's death.

Example 3: Jerry dies in 2020 at age 85. He lives his $2 million Roth IRA to his 24-year-old spouse Jasmine. Since Jasmine is an eligible designated beneficiary, the new 10-year rule does not apply to her. As a surviving spouse, she can retitle the inherited Roth account in her own name. Then she will not have to take any RMDs for as long as she lives. So, this is a situation where the Stretch IRA strategy still works well (although not quite as well as before the Secure Act for reasons that are too complicated to explain here).

Example 4: Kendrick dies on Dec. 15, 2019. He left his IRA to designated beneficiary Kelli, his beloved niece, who is 30 years younger than Kendrick. Because Kendrick died before 2020, the balance in the inherited IRA can be paid out over Kelli's life expectancy under the pre-Secure Act RMD rules. If Kelli dies on or after 1/1/20, the balance in the IRA must be paid out to her designated beneficiary or beneficiaries or the heir(s) who inherit the account within 10 years after Kelli's death.