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the CARES Act changes retirement account rules... again

The CARES Act (Coronavirus Aid, Relief, and Economic Security), which became law on March 27, 2020, made some important modifications to retirement accounts for 2020. For example:

- Required minimum distributions (RMDs) are waived, for both account owners and beneficiaries who have inherited an account.
- The 10% early withdrawal penalty is waived for distributions up to $100,000, if any of the account owner, spouse or a dependent has been diagnosed with coronavirus; or if the owner has experienced adverse financial circumstances as a result of coronavirus.
- The maximum loan amount has been increased from $50,000 to $100,000, and a loan may equal the full vested value of the account.

MEET THE PLANNERS

John R. Blasi, Esq.
Westfield
jblasi@lindabury.com

James K. Estabrook, Esq.
Westfield
jestabrook@lindabury.com

David G. Hardin, Esq.
Summit
dhardin@lindabury.com

Mary Patricia Magee, Esq.
Red Bank
mmagee@lindabury.com

Elizabeth Engert Manzo, Esq.
Westfield
emanzo@lindabury.com

Lauren Neureither, Esq.
Westfield
lneureither@lindabury.com

Elizabeth Candido Petite, Esq.
Westfield
epetite@lindabury.com

Anne Marie Robbins, Esq.
Summit
arobbins@lindabury.com

the SECURE Act eliminated stretch IRAs... now what?

by Elizabeth Candido Petite, Esq.

The SECURE Act ("Setting Every Community Up for Retirement Enhancement" Act), which was enacted in December 2019, eliminated the "stretch IRA"—a feature of an inherited IRA[1] account that allowed the beneficiary to stretch out required minimum distributions (RMDs) over his or her lifetime, thereby deferring a significant amount of income tax. Now, beneficiaries must withdraw the entire account over the 10-year period following the owner's death. Doing so will significantly accelerate the income tax due with respect to the account.

Perhaps you are thinking: this is a piece of legislation coming from Washington—there's got to be a loophole, right? The answer is: maybe.

Here are a few planning ideas to consider in light of the SECURE Act:

- **Increase the number of designated beneficiaries.** If an IRA account is divided among five beneficiaries instead of two, for example, the amount that each beneficiary receives, and therefore must pay tax on, is less. Of course, this works best in large families where there are more people who may be named as beneficiaries.
- **Designate beneficiaries in a lower tax bracket.** If you have one child who is wealthy and another who is not, you could designate the less wealthy child as the beneficiary of your IRA and the wealthier one as the beneficiary of another asset. The income tax liability may be less burdensome to your child who is less well-off and in a lower tax bracket. But beware: this type of estate planning requires frequent review if your goal is to ensure that your children are treated equally.
- **Take advantage of a Roth conversion during your lifetime.** If you are in a lower tax bracket than your designated beneficiaries, you could convert your traditional IRA into a Roth IRA. Doing so will have an immediate income tax consequence to you, but will greatly benefit your beneficiaries because distributions from a Roth IRA are not taxable.
- **Designate "eligible beneficiaries" who can still continue to stretch RMDs.** The SECURE Act allows "eligible beneficiaries" to stretch RMDs over their lifetimes. These include spouses, minor children, and chronically ill or disabled persons. But beware, the 10-year rule comes into play once minor children become adults, and an RMD in the hands of a disabled beneficiary could jeopardize eligibility for government benefits.
- **Spend down IRAs, save other assets.** For example, consider using your RMDs to make charitable contributions during your lifetime rather than making donations from other assets; the maximum amount allowed per year is $100,000.
- **Utilize charitable remainder trusts.** Leaving your retirement accounts to a charitable remainder trust allows your relatives or friends, as the income beneficiaries, to receive distributions from the trust that the trustee withdraws from the IRA over the course of their lifetimes (or a specified time period), instead of taking the IRA distributions over the 10-year period required under the SECURE Act. Whatever is left upon their death (or at the end of the specified term of years) must pass to charity, so this approach works best if you are already charitably inclined.

We recommend that you talk to your estate planning attorney, accountant or financial planner about whether any of these planning ideas regarding retirement accounts may benefit you and your family.

1. For purposes of this article, "IRA account" refers to all types of retirement accounts, including Individual Retirement Accounts, 401(k) plans, 403(b) plans, and the like.

uses of disclaimers in post-mortem planning

by Lauren Neureither, Esq.

The idea of giving up an inheritance might sound foolish, but in certain circumstances it can be a beneficial estate planning tool. While we as estate planning attorneys try to prepare for every possible outcome at the time of a death, there is no way to predict the timing of a death, the laws at that time, nor the assets a decedent will actually hold at death. Especially in today's environment where COVID-19 has shocked our economy, the tax laws could change at any time.

A disclaimer or a renunciation is a refusal to accept an interest in property. No one can be forced to receive a gift or bequest; everyone has the right to either accept or refuse what is given. In certain situations, disclaiming may be more beneficial than actually receiving the gift. If the beneficiary of a decedent's estate disclaims an asset passing to the beneficiary (the "disclaimant") as a result of decedent's death, the asset passes to the next-in-line beneficiary as if the disclaimant had predeceased the decedent.

Disclaimer Requirements

Under federal law, a "qualified disclaimer" is an irrevocable and unqualified refusal by a person to accept an interest in property so long as the following requirements are met:

- The disclaimer must be in writing;
- The disclaimer must be made no later than 9 months after the date of the transfer creating the interest (or 9 months after the disclaimant turns 21);
- The disclaimant must not have accepted the interest or any of its benefits; and
- As a result of the disclaimer, the property interest passes without direction on the part of the disclaimant either to decedent's spouse or to a person other than the disclaimant.[1]

Under New Jersey Law, a disclaimer must be in a writing signed and acknowledged by the person disclaiming, and must:

- Describe the property, interest, power or discretion disclaimed;
- If the property interest disclaimed is real property, identify the municipality and county in which the real property is situated; and
- Declare the disclaimer and the extent thereof.[2]

Unlike federal law, there is no time requirement for filing a New Jersey disclaimer; the disclaimer need only be delivered, and if required filed, before the right to disclaim is barred by N.J.S.A. 3B:9-9.[3]

Use of Disclaimers

New Jersey law does not allow use of disclaimers to avoid existing creditors; in such cases, the right to disclaim is barred under our statutes.[4] However, there are many situations in which disclaimers may be used to optimize tax results. Here are a few examples:

- **Using both spouses' available exemptions from estate tax.** Estate planning attorneys incorporate disclaimer planning in wills by providing an outright gift of assets to the spouse, followed by a disclaimer trust. The surviving spouse would establish and fund the trust by disclaiming all or a portion of the outright gift. The decision to create the trust would be based upon the tax laws and other factors at the time of the first death. The federal law of portability of spousal exemptions provides a method for both spouses' federal estate tax exemptions to be secured, but New Jersey law does not provide for portability. Therefore if New Jersey's estate tax is reinstated, the surviving spouse could capture the predeceased spouse's New Jersey estate tax exemption by disclaiming a portion of the gift to him or her. If a disclaimer trust is included in a will, the disclaimed assets may be held in a trust for the surviving spouse's benefit.
- **Allowing for tax deferral though use of the unlimited marital deduction.** If at a decedent's death estate tax would be incurred because of gifts to children or other non-spouse beneficiaries, disclaimers by the beneficiaries may allow assets to pass instead to the surviving spouse, thus qualifying the gifts for the unlimited marital deduction under federal and state law. For this to work, the surviving spouse would have to be the taker in default (the person who inherits if the named beneficiary is deceased) under the will or intestacy laws of the state in question.
- **Avoiding the imposition of New Jersey inheritance tax.** If a decedent's will gives all probate assets to Class A beneficiaries for purposes of the New Jersey inheritance tax (spouses and children are Class A beneficiaries), but the decedent also named a "POD" (pay on death) beneficiary on a bank or brokerage account who is not a Class A beneficiary (thus incurring an inheritance tax at death), the beneficiary could disclaim. Assuming the account then passes as part of decedent's estate under the will, the disclaimer will have the effect of avoiding New Jersey inheritance tax. Because New Jersey does not impose a gift tax (and provided there is no federal gift tax exposure), the POD beneficiary could be made whole by a gift from the beneficiaries under the will.
- **Optimizing the generation-skipping transfer ("GST") tax exemption.** If children have sufficient assets of their own, they could decide to disclaim assets passing to them from a parent's estate, or their interests in a GST trust, in order to pass the assets on to their own children. If 'predeceased parent exception' applies, the transfers to the grandchildren would not be considered generation-skipping, thus preserving more GST exemption for other transfers.

Disclaimers can be extremely useful in appropriate circumstances. They are a flexible tool that should always be kept in mind in post-mortem planning situations.

1. I.R.C. § 2518.
2. N.J. S.A. 3B:9-3.
3. N.J.S.A. 3B:9-4.2.
4. See N.J.S.A. 3B:9-9(a)(6).

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