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Converting Excess 529 Plan Account Funds to a Roth IRA

Impact of Artificial Intelligence on Estate Planning Attorneys

planning matters

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converting excess 529 plan account funds to a Roth IRA

by Christopher Cardone, Esq.

A 529 plan account is a tax-efficient way to save for a child's or grandchild's education costs. 529 plans, legally known as "qualified tuition plans," are sponsored by states, state agencies, or educational institutions and are authorized by Section 529 of the Internal Revenue Code. 529 plan accounts have multiple tax advantages, including allowing an individual to contribute up to $18,000 per year, or $36,000 per married couple. These contributions are considered gifts to the beneficiary of the account but are not taxable because they qualify for the so-called "annual exclusion" from taxable gifts. The investments in the 529 plan grow tax-deferred, and withdrawals are not subject to income tax when used for qualified educational expenses.

Considering the high cost of education today, it may seem unlikely that any assets in a 529 plan account would go unused. However, if an account's beneficiary decides not to attend college, attends a more affordable school, or receives a significant scholarship or financial aid, it is possible there would be funds remaining in the 529 account when the beneficiary's education is concluded. Withdrawals from 529 accounts that are not used for qualified educational expenses are subject to income tax and excise tax of 10% on the earnings portion of the withdrawals. Certain exceptions to the 10% penalty apply. To avoid the income and excise taxes, account holders have the option to change the beneficiary of the 529 account to an eligible relative of the original beneficiary, such as a sibling, child, or other descendant. Beginning in January of 2024, another option that avoids the income and excise taxes is to roll over the amount remaining in the 529 account to a Roth IRA. Whereas amounts withdrawn from 529 accounts may only be used for qualified educational expenses, withdrawals from Roth IRAs do not have restrictions on their use.

In the Setting Every Community Up for Retirement Enhancement Act 2.0 ("SECURE 2.0") enacted by Congress at the end of 2022, it is now possible to roll over 529 plan account assets to a Roth IRA in the name of the account beneficiary, free of income and excise taxes.

There are several requirements to consider before proceeding with a rollover:

- First, the 529 plan account must have been in existence for at least 15 years.
- A rollover may only be made to the Roth IRA of the 529 account beneficiary.
- The maximum lifetime amount that can be rolled over from a 529 account to a Roth IRA is $35,000.
- The annual rollover from a 529 account cannot exceed the annual Roth IRA contribution limit ($7,000 for 2024 or $8,000 if the beneficiary is over age 50). As a result, moving $35,000 to a Roth IRA could take over five years to complete.
- Contributions to the 529 plan made within the previous five years (including earning on such contributions) are ineligible to be transferred to the Roth IRA.
- Rollovers are not subject to the typical income limitations to contribute to a Roth IRA. As an example, if a beneficiary's income exceeds $153,000 (the income limitation for a single filer), the beneficiary could not contribute to a Roth IRA but could still roll over funds from a 529 account to a Roth IRA.
- Finally, the beneficiary of a 529 plan will need to have compensation at least equal to the amount being rolled over during the years the 529 to Roth rollovers are taking place.

The ability to roll over excess assets in a 529 plan account to a Roth IRA is a powerful way to convert savings for a beneficiary's education to retirement savings and should be considered an option whenever a 529 account holds more assets than the beneficiary requires for educational expenses. Further guidance from the IRS is expected to clarify the legislation allowing such rollovers, and therefore it is advisable to consult with your estate planning attorney and other tax advisors before commencing a plan to transfer 529 account balances to Roth IRAs.

impact of artificial intelligence on estate planning attorneys

by Anne Marie Robbins Esq. & Christopher Cardone, Esq.

Artificial intelligence (AI) is in the beginning stages of a revolution. For the better part of the last century, this technology saw little application outside of data analytics and computer algorithms.

Today, AI can replicate real communication with surprising ease. ChatGPT, for instance, is known for its ability to draft essays and summarize long passages from a book in mere seconds, a boon for many a student. Recently, ChatGPT even passed the uniform bar exam on its first attempt. Which begs the question, will this technology replace estate planning attorneys? If you ask ChatGPT yourself, you might be surprised. We typed "I have a legal question" in the search bar, and nearly instantaneously ChatGPT responded, "Sure, I can try to help. Please keep in mind that I'm not a lawyer, and my responses are not a substitute for professional legal advice."

Still curious, we pressed on, and asked ChatGPT the following question:

> **Question:** Write two paragraphs about the impact that artificial intelligence is having on estate planning lawyers.
>
> **ChatGPT's response:** "Artificial intelligence (AI) is revolutionizing the field of estate planning for lawyers, introducing transformative changes in how legal professionals approach their practice. One significant impact is the streamlining of document analysis and drafting processes. AI-powered tools can efficiently review large volumes of legal documents, identifying key clauses and potential issues in estate planning documents. This not only accelerates the document review process but also enhances accuracy, reducing the likelihood of human errors that could have profound implications for clients.

Furthermore, AI is playing a crucial role in personalized and data-driven decision-making in estate planning. Lawyers can leverage AI algorithms to analyze vast datasets, extracting valuable insights that inform strategic decisions for their clients. This includes scenarios and potential tax implications, assessing the financial impact of various estate distribution scenarios, and recommending optimal wealth preservation strategies. The integration of AI technologies in estate planning empowers lawyers to provide more comprehensive and tailored advice, ultimately ensuring that clients receive solutions aligned with their unique circumstances and financial goals. As the legal landscape continues to embrace AI advancements, estate planning professionals are well-positioned to navigate complexities more efficiently and deliver enhanced services to their clients."

ChatGPT may have a point, in that online estate planning programs and document drafting software can utilize artificial intelligence to streamline or automate the drafting process, making it more accessible and cost-effective for those on a budget. However, what are the tradeoffs for such convenience and accessibility? Limited guidance, and the absence of the expertise, level of customization, and personalized service that an experienced estate planning attorney can provide.

Estate planning, at its core, is a deeply personal engagement that requires a particular understanding not only of one's clients as individuals, but also their assets, family dynamics, and goals for their intended beneficiaries. Coupled with that understanding is a knowledge of the relevant and ever-changing federal and state laws derived from years of practice. While ChatGPT may be helpful to answer questions or provide drafts of generic estate planning documents, non-lawyer users would almost need law degrees themselves to ask the appropriate prompts in order to produce accurate documents that accomplish what the client desires while simultaneously addressing not only probate and transfer tax ramifications, but also the applicability of other areas of the law, for example, matrimonial, corporate, and real estate law to name just a few.

AI may be able to support and supplement the services of estate planning attorneys but would be unable, in our opinion, to fully supplant estate planning attorneys. Use of AI alone to craft an appropriate estate plan could result in a plan that does not dispose of an individual's estate according to his or her wishes, does not minimize or eliminate applicable transfer taxes, and does not consider the nuances of the personal relationships among a client's family members. ChatGPT may be proficient at taking an exam, but the underlying technology is not presently capable of actual reasoning, providing human compassion, or utilizing creativity to address an individual client's unique circumstances.

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