The SECURE Act of 2019

Without the fanfare of the Tax Cuts and Jobs Act of 2017, new tax legislation was passed in December 2019. After being approved by the House over the summer, and after months of speculation about the bill's future, the Setting Every Community Up for Retirement Enhancement (SECURE) Act was unexpectedly attached to a year-end appropriations bill that "had to pass" in order to keep our government running. And so it did…the bill was quickly passed by the House and Senate on December 17th and 19th, and then signed into law by the President on December 20th.

As the name suggests, the more significant provisions of this bill relate to retirement accounts. Perhaps the most significant is the elimination of the so-called "Stretch IRA" for beneficiaries of IRAs and defined contribution (401k and 403b) plans. Designated beneficiaries of those who passed away prior to January 2020 were able to spread withdrawals over their lifetime, and may continue to do so. However, for most non-spouse designated beneficiaries of those who pass away in 2020 and beyond, the new standard under the SECURE Act will be the 10-Year Rule. Under the 10-Year Rule, beneficiaries are required to empty the account by the end of the 10th year following the year of death. Withdrawals within this ten-year period are flexible.

Note that there are four groups of "Eligible Designated Beneficiaries" for whom the 10-Year Rule will not apply:

- Spouses
- Disabled persons
- Chronically ill
- Certain minor children, but only until they reach the age of majority, at which time the 10-Year Rule kicks in

Of concern are situations in which trusts are named as retirement account beneficiaries. The new tax rules may have unexpected consequences. For example, some trusts are written in a manner that only allows for the Required Minimum Distribution (RMD) to be disbursed each year. Under the new rules, there is only one year where there is an actual RMD…the 10th year! Trust documents should be reviewed in light of the new distribution rules, and other relevant changes in the new law.

Another significant retirement provision represents a change to the start of RMDs. Previously, owners of IRAs and certain retirement accounts were subject to the RMD in the year in which the owner turned 70½. This has been pushed back to the year in which the owner turns 72. Interestingly, this change slightly favors those who were born in the first half of the year (and want to delay their RMD) pushing back the first withdrawal by two years. For those born in the second half of the year, the RMD is only pushed back one year.

Note that consistent with current law, the first RMD can actually be delayed until April 1 of the following year, but the next RMD is still due by 12/31 of that same following year, resulting in two withdrawals in the same calendar year.

The SECURE Act also lifts the prohibition on traditional IRA contributions once an individual reaches age 70½. Beginning in 2020, individuals of any age will be allowed to contribute to a traditional IRA, as long as that individual has enough earned income to support the contribution.

Shown below are some additional retirement account provisions in the Act:

- A "Qualified Birth or Adoption Distribution" of up to $5,000 is not subject to the 10% early withdrawal penalty
- A Fiduciary "Safe Harbor" pro- vision covers the addition of annuity options (Lifetime Income Provider) to a retirement plan
- Annuity "portability" provisions have been added
- Small business incentives for retirement plan adoption and use
- Various provisions designed to increase 401k participation
- Employers may adopt employer-funded retirement plans up to the due date of employer's tax return
- Increased penalties for failure to file retirement plan tax returns

The SECURE Act also expanded the list of Qualified Education Expenses for Section 529 College Savings Plans. Beginning in 2020, tax-free withdrawals can be taken from 529 plans to cover Apprenticeship Program costs, such as fees, books, supplies and required equipment.

A lifetime maximum of $10,000 can also be withdrawn from a 529 Plan for "Qualified Education Loan Repayments." This lifetime limit is per person. An additional $10,000 may be distributed to satisfy outstanding debt for each of a 529 plan beneficiary's siblings.

The Kiddie-Tax reverts back to the old rules, reversing the change made by the Tax Cuts and Job Act of 2017. Once again, any income subject to the Kiddie Tax is taxed at the child's parents' marginal tax rate. The change is effective in 2020, however taxpayers can elect to apply the change to the 2018 and 2019 tax years.

There are many more provisions of the new tax law, and nuance to a number of the changes listed above. We will discuss relevant changes with clients that are impacted. In the meantime, please let us know if you have any questions, or if we can provide additional information.