

What is the SECURE Act of 2019?

The SECURE Act which had bipartisan support was signed into law on December 20, 2019, and effective January 1, 2020, as part of a larger government spending package. The legislation makes policy changes to defined contribution plans (such as 401(k)s), defined benefit pension plans, individual retirement accounts (IRAs) and 529 college education plans. In regard to estate planning, the most sweeping changes made by the bill are in regard to how qualified retirement plans are paid out after the death of the original owner.

Now that the SECURE Act is law, inherited IRA distributions generally must be taken within ten years of the original owner's death rather than over the life expectancy of the beneficiary. However, the SECURE Act does allow for some exceptions of continued tax deferrals for certain beneficiaries. Exceptions to the new 10-year rule include assets left to a surviving spouse, a minor child, an individual not more than ten years younger than the original owner, persons with disabilities and certain trusts created for the sole benefit of a person with a disability. Tax avoidance of qualified retirement accounts still exists for charitable beneficiaries. When funds are withdrawn from a qualified account, they are taxable for income tax purposes. By limiting the time frame that the funds can be withdrawn from the retirement fund, the years of tax-free growth are also limited. Note that Roth IRAs are not affected by the new income taxation of retirement accounts as distributions from Roth IRAs are tax-free.

Prior to the passage of the SECURE Act, tax-deferred accounts could be passed to beneficiaries at death and distributed over the lifetime of the beneficiary. This method of withdrawal deferral would allow the assets in the account to continue to grow tax free during the lifetime of the new beneficiary and minimize the amount the beneficiary was required to take annually, therefore reducing income taxes. IRAs utilizing this method of deferred taxation were referred to as stretch IRAs.

With the loss of the stretch IRA and the increase in taxation to beneficiaries, many are searching for solutions to alleviate the tax burden. One solution is to consider a Roth conversion of an existing traditional IRA. This mitigates income tax costs by the owner paying some income tax now so distributions to future beneficiaries are not subject to income tax under the ten-year rule. Another option is to consider utilizing a sprinkle accumulation trust that benefits not just your children but also their children shifting the tax burden among more beneficiaries who are in lower income tax brackets. Some clients are looking to life insurance policies and life insurance trusts to replace tax liability generated from the new ten-year rule as life insurance death benefits are income tax free. Others are considering naming charitable beneficiaries of their retirement accounts to avoid income taxation.

Not only did the SECURE Act get rid of the stretch IRA, it made other changes regarding the management of retirement accounts. Under the new law, required minimum distributions now begin at age 72 for individuals who turn 70½ in the year 2020. Contributions can now be made to traditional IRAs past age 70½ as long as the individual is still working. An amount up to \$5,000 per parent can be withdrawn penalty-free from a retirement plan upon the birth or adoption of a child. Qualified education plans, also known as 529 plans, can now be used to pay down student loan debt, up to \$10,000.

As the tax changes with the SECURE Act are significant, if qualified retirement accounts make up an important part of your estate, it is time to review beneficiary designations and trust provisions to determine how this law affects you and your loved ones.

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