

Retirement-Related Provisions of the CARES Act

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Overview

The government's response to the virus that originated in China and has spread to the United States has, in turn, precipitated Congressional legislation designed to provide economic relief from that government response. Last week, I devoted a blog article to the small business and bankruptcy provisions. In today's post, I examine the retirement-related provisions. Later this week, I will provide a run-down of the individual and business income tax-related provisions.

Retirement-related provisions of recent legislation – it's the topic of today's post.

Change In Early Distribution Penalty Rule

[I.R.C. §72\(t\)](#) provides for a 10 percent additional tax on an early distribution from a qualified retirement plan as defined in [I.R.C. §4974\(c\)](#). [I.R.C. §72\(t\)\(1\)](#). The penalty tax does not apply if the distribution is made on or after the date the taxpayer turns age 59 and ½. [I.R.C. §72\(t\)\(2\)](#). It also doesn't apply to post-death distributions and distributions made on account of disability, among other things. See [I.R.C. §72\(t\)\(2\)\(A\)\(i\)-\(viii\)](#).

Section 2202 of H.R. 748, the Coronavirus Aid Relief and Economic Security (CARES) Act (Act), Pub. L. No. 116-136, amends [I.R.C. §72\(t\)](#) such that the 10 percent penalty does not apply to any coronavirus-related distribution of \$100,000 or less during the tax year from an eligible retirement plan. *Act*, §2202(a)(1)-(2). An "eligible retirement plan" is one listed in [I.R.C. §402\(c\)\(8\)\(B\)](#). That means that IRAs, individual retirement annuities, qualified trusts, annuity plans, governmental deferred compensation plans, qualified pension, profit sharing or stock bonus plans (including [I.R.C. §401\(k\)](#) plans), annuity plans and contracts, as well as custodial accounts.

The distribution must occur on or after January 1, 2020 and before December 31, 2020. *Act*, §2202(a)(4)(A)(i). It is *not* available for distributions made on December 31, 2020. *Id.* The distribution must also be made to a "qualified person" – a person or the person's spouse or dependent (as defined in [I.R.C. §152](#)) that is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test that the Centers for Disease Control and Prevention has approved. *Act*, §2202(a)(4)(A)(ii)(I-II). A qualified person is also one who experiences adverse financial consequences as a result of being quarantined, furloughed or laid off or as a result of reduced work hours due to the virus or disease. *Act*, §2202(a)(4)(A)(iii). A qualified person is also one who is unable to work due to lack of child-care due to the virus or disease, as well as an owner (undefined) of a business (undefined) who either closed the business or reduced business hours due to the virus or disease. *Id.* The Act also gives the Secretary of the Treasury the ability to determine other factors via regulation. *Id.*

The administrator of an eligible retirement plan (as defined by [I.R.C. §402\(c\)\(8\)\(B\)](#)) can rely on an employee's certification that the employee is a qualified individual when determining whether a distribution is a qualified distribution. *Act*, §2202(a)(4)(B).

The amount distributed may be repaid at any time during the three-year period beginning on the day after the date on which the distribution was received via one or more contributions to an eligible

retirement plan of which the taxpayer is a beneficiary and to which a rollover contribution could be made. *Act* §2202(3)(A). If the amount repaid is attributable to a distribution from an eligible retirement plan other than an IRA, the taxpayer is treated as having received the distribution in an eligible rollover distribution (as defined by [I.R.C. §402\(c\)\(4\)](#)) and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within 60 days of the distribution. *Act*, §2202(3)(B). The same result is obtained if the amount repaid traces to a distribution from an IRA. *Act*, §2202(3)(C).

While the 10 percent penalty is waived for such virus or disease-related early distributions, the amount withdrawn must still be included in income. However, the Act provides that distributed amounts are to be included in income ratably over the three-year period beginning with 2020. *Act*, §2202(a)(5)(A). An election out of the three-year rule can be made. *Id.* Qualified distributions are also exempt from the normal trustee to trustee and withholding rules. In other words, virus/disease-related distributions are not treated as eligible rollover distributions. *Act*, §2202(a)(6)(A). But, the distributions are treated as satisfying plan distribution requirements. *Act*, §2202(a)(6)(B).

Loans

Loans from a qualified employer plan can be made up to \$100,000 (up from \$50,000) for the first 180 days of the Act (180 days from March 27, 2020). The loan is capped at 100 percent of the vested account balance and must be to a qualified individual. *Act*, §2202(b)(1)(A). If repayment of the loan occurs in 2020, the due date is delayed for one year. *Act*, §2202(b)(2). In other words, for an outstanding loan or after March 27, 2020 from an eligible retirement plan that must be repaid between March 27 and the end of 2020, the due date is extended for one year.

Modified Required Minimum Distribution Rule

In late December of 2019, the Congress passed Omnibus spending bills containing multiple parts that impact retirement provisions and disaster relief tax rules. One of those bills, the “Setting Every Community Up for Retirement Enhancement Act” (SECURE Act), increased the required minimum distribution (RMD) age for distributions from a traditional IRA from the year in which an individual turns 70.5 to the year the individual turns 72. This provision matches the existing rules for 401(k)s and Roth IRAs. The provision is applicable to persons that did not reach age 70.5 by the end of 2019. *SECURE Act* §114(a), amending [I.R.C. §401\(a\)\(9\)\(C\)\(i\)\(I\)](#).

The Act amends [I.R.C. §401\(a\)\(9\)](#) to waive the required minimum distribution rule for calendar year 2020 for an IRA, [I.R.C. §401\(k\)](#) plan [I.R.C. §403\(b\)](#) plan or other defined contribution plan, that is in effect by the end of 2020. *Act*, §2203(a). The waiver applies to any distribution required to be made in 2020 due to a required beginning date occurring in 2020 as well as because of the distribution not having been made by the end of 2019. *Id.*

Conclusion

The virus has generated a great deal of activity on Capitol Hill, some of which applies to retirement plans. The big changes apply to the possibility of having the early withdrawal penalty eliminated, plan loans and a change to the required minimum distribution rule.

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