SECURE ACT AND IMPACT ON ESTATE PLANNING

Congress in late December 2019 passed and President Trump signed into law legislation known as the SECURE Act. Additional guidance from the Treasury Department has been subsequently issued. The SECURE Act makes significant changes which are likely to affect many individuals. These changes affect how withdrawals can be made from Individual Retirement Accounts, 401(k) plans, 403(b) plans, and similar retirement savings accounts (a "Retirement Account"). This memo briefly describes some of these changes.

1. Starting Age for Required Minimum Distributions.

The starting age for required minimum distributions has increased from age 70-½ to age 72. The required beginning date is April 1 of the year after the year in which such individual reaches age 72. This required beginning date is effective for anyone born after June 30, 1949. Those born on or before June 30, 1949, continue to be subject to the old age 70-½ rule. For certain individuals who are still working, the ability to defer the starting age for distributions from the employer's plan until after the year in which he or she retires still applies. Note, however, that age 70-½ is still the date on which someone may qualify for making qualified charitable contributions from a Retirement Account as detailed below.

2. Elimination of the Life Expectancy Pay-out in Most Cases.

The ability to stretch pay-outs over the life expectancy of a beneficiary is limited. Generally, only a surviving spouse, a minor child of a participant, the disabled or chronically ill, or a beneficiary who is less than 10 years younger than the deceased Retirement Account owner may qualify for a life expectancy distribution period. Essentially, a 10-year payout replaces the life expectancy payout method for all but certain categories of designated beneficiaries. Those categories of beneficiaries are entitled to a modified version of the life expectancy payout.

All amounts must be distributed by December 31st of the year that contains the 10th anniversary of the date of death. Between the date of death and December 31st of the year that contains the 10th anniversary, no distributions are required; however, all funds must be distributed by the 10th anniversary date.

The surviving spouse named as beneficiary still has the option to roll over the inherited benefits to his or her own IRA or (in the case of an inherited IRA) to elect to treat it as his or her own IRA.

3. Traditional IRA Age Cap.

Historically, an individual could not contribute to a traditional IRA in or after the year in which he or she reached age 70-½. That age cap has been removed. As of January 1, 2020, anyone otherwise qualifying for contributing to a traditional IRA may do so regardless of age.

4. Qualified Charitable Deductions.

While the starting age for required minimum distributions increased to 72, age 70-½ is still the date on which someone may qualify for making qualified charitable contributions from a Retirement Account. However, in order to prevent a taxpayer from making a tax-deductible IRA contribution and an income-excludable qualified charitable deduction with the same dollars, the SECURE Act modifies the income exclusion for qualified charitable deductions by reducing the $100,000 maximum permitted annual exclusion by the amount of any deductible IRA contributions made after age 70-½.

5. Qualified Plans Created After Year-End.

Previously, unlike IRAs, a 401(k) or other qualified retirement plan had to be established before year end to receive a contribution deduction with respect to that year. Under the SECURE Act, commencing with 2020, employers may now set up 401(k) and other qualified retirement plans after year end up to the due date of the tax return for the year. Now this grace period is extended to qualified plans beginning with the 2020 year. That is, a qualified plan can be set up, effective for 2020 or any subsequent year, as late as the due date (including extensions) of the tax return for such year.

6. IRA Planning with Trusts.

Some clients have implemented stretch IRA planning into their estates and trusts. For some of those clients, now changes to estate plans may be necessary. In particular, if you have trusts designed to pay only the required minimum distribution, or the trust is designated to provide retirement benefits to disabled or chronically ill, then some changes to the trust may be necessary to minimize income taxes and maximize income tax deferral opportunities. We recommend clients consider reviewing and perhaps revising their estate plans at least once every ten (10) years to revisit the needs of heirs, changes in family relationships, and changes in tax law. So, there could be other reasons to reevaluate your trust and estate plan.