

*Key IRA Takeaways
in the Secure Act 2.0*

**The 50th Annual
Charitable Tax Seminar**

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1

What Will Be Covered Today:

- Changes made by the SECURE 2.0 legislation
- Charitable uses of retirement assets
 - General rules
 - Outright charitable gifts from IRAs after age 70 1/2
 - New: Lifetime gifts from IRAs to CRTs and for charitable gift annuities
- New rules for required distributions from retirement accounts
 - Lifetime distributions at age 73
 - Inherited IRAs: Maximum years to liquidate
 - Impact of 2022 Treasury Department proposed regulations

2

**REQUIRED MINIMUM DISTRIBUTIONS
*LIFETIME DISTRIBUTIONS – YEAR 2023**

Age of Account Owner	Required Payout
73	3.79%
75	4.07%
80	4.95%
85	6.25%
90	8.27%
95	11.24%
100	15.71%

3

2023 RETIREMENT PLAN LAW CHANGES
"SECURE ACT 2.0" - Dec. 29, 2022

- New RMD Age : 73 (75 in 2033) – up from 72 (and 70 ½)
(Despite new age 73, charitable QCD still at age 70 ½)
- Automatic enrollment in 401(k) for new businesses with over 10 employees (2025)
- No RMDs from Roth 401(k) (to make same as Roth IRA rule) - effective 2024
- Employer **matching** contributions to Roth 401(k) can be after-tax, (so distributions from the employer's Roth matching \$ can be tax-free after age 59 ½)
- Catch-up contributions: more \$ ages 60, 61, 62, & 63; after-tax if wealthy.
 - Whereas employees who have attained age 50 can add an extra \$7,500 to their 401(k) accounts, employees who are age 60, 61, 62, or 63 can add an extra \$10,000.
 - Beginning in 2024, workers who earn more than \$145,000 will have to put the catch-up money into a Roth 401(k) (i.e., they can't reduce taxable income by the catch-up).
- Money leftover in 529 accounts can be moved to a Roth IRA
(lifetime limit of \$35,000 per *beneficiary*; other restrictions on high-income T/P)

4

Money leftover in 529 accounts
can be moved to a Roth IRA

- A maximum of \$35,000 can be rolled over from a 529 plan to a **beneficiary's** Roth IRA (not to the Roth IRA of the 529 owner, if different from the beneficiary)
- Each year's maximum is that year's Roth IRA contribution cap (\$6,500 in 2023)
 - Rollovers are not allowed until a 529 account has existed for at least 15 years
 - Funds converted from a 529 plan to a Roth IRA must have been in the account for at least five years
 - This law becomes effective in the year 2024

5

WHAT TO DO ?

Tax Saving Strategies for Charitable Gifts

- Most donors over age 70 ½ should make *ALL* of their charitable gifts from their IRAs:
"Qualified Charitable Distribution" (QCD)

6

Qualified Charitable Distribution
-- Lifetime Gifts from IRAs --

OUTRIGHT GIFTS

General Rule: A person cannot make a gift from a retirement account to a family member or to a charity without triggering taxable income.

"Income is taxed to the person who earned it" Lucas v. Earl

Exception: A qualified charitable distribution ("QCD") from an IRA after age 70 ½

7

Qualified Charitable Distribution
-- Lifetime Gifts from IRAs --

• Eligible Donors:

- Won't report charitable gifts from IRAs as taxable income
- Not entitled to charitable income tax deduction

8

Qualified Charitable Distribution
-- Lifetime Gifts from IRAs --

- Law Permanent! 2015 PATH Act Dec 20.2015
- Eligible Donors:
 - Won't report charitable gifts from IRAs as taxable income
 - Not entitled to charitable income tax deduction

Example: Donor, age 75, who has a \$10,000 RMD from IRA, says:

- "Issue a check to a charity for \$4,000"
- "Issue a check to me for \$6,000"

9

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The image shows a portion of a tax form with the following sections:

- Exemptions:**
 - 3 Married filing separately. Enter spouse's SSN above and full name here.
 - 5 Qualifying widow(er) (see instructions)
 - 6a Yourself. If someone can claim you as a dependent, do not check box 6a.
 - 6b Spouse
 - 6c Dependents: (i) First name, (ii) Social security number, (iii) Dependent's relationship to you, (iv) If 7 (iii) child, age (v) Qualifying for child tax credit (see instructions)
 - 6d Total number of exemptions claimed
- Income:**
 - 7 Wages, salaries, tips, etc. Attach Form(s) W-2
 - 8a Taxable interest. Attach Schedule B if required
 - 8b Tax-exempt interest. Do not include on line 8b
 - 9 Ordinary dividends. Attach Schedule B if required
 - 9a Qualified dividends
 - 10 Taxable refunds, credits, or offsets of state and local income taxes
 - 11 Alimony received
 - 12 Business income or loss. Attach Schedule C or C-EZ
 - 13 Capital gain or loss. Attach Schedule D if required. If married, check here
 - 14 Other gains or losses. Attach Form 4797
 - 15a IRA distributions: (i) 100,000, (ii) Taxable amount, (iii) 6,000 QCD
 - 15b Pensions and annuities: (i) Taxable amount
 - 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E
 - 18 Farm income or loss. Attach Schedule F
 - 19 Unemployment compensation
 - 20a Social security benefits: (i) Taxable amount
 - 21 Other income. List type and amount
 - 22 Combine the amounts in the far right column for lines 7 through 21. This is your total income

10

Qualified Charitable Distribution -- Lifetime Gifts from IRAs --

- IRA owner must be over age 70 ½
- Maximum: \$100,000 per year
- Yes! Charitable gift satisfies required minimum distribution requirement from IRA!

11

WHO WINS?

- Donors who do not itemize tax deductions ("standard deduction")
- Donors who live in states where the state income tax laws do not permit deductions for charitable contributions (Ohio, Indiana, etc)

12

WHO WINS ?

- Donors who incur taxes as their income increases
 - social security benefits taxable
 - Medicare "B" premiums
 - 3.8% health tax if AGI > \$200,000
- The heirs
 - inherited stock gets step-up tax basis
 - inherited IRAs are taxable income

13

LEGAL REQUIREMENTS

- Over age 70 ½
- IRA (only) – not 403(b), 401(k), etc.
- "Directly" from the IRA to charity
 - "IRA checkbooks" are OK

14

LEGAL REQUIREMENTS

- ELIGIBLE CHARITY – Public charity or private *operating* foundation
 - however, a PF, donor advised fund or supporting org is not eligible
- Must qualify for full charitable deduction
 - no dinners; no purchases at auctions, etc.

15

LEGAL REQUIREMENTS

- Taxable part of IRA distributions (only)
 - tax-free distributions protected
- Donor must have letter from charity that donor received no goods or services in exchange for the gift

16

TECHNICAL ISSUES

- Yes! Charitable IRA gifts can satisfy legally binding pledges!
- Joint return? Up to \$200,000
- No withholding taxes
- Beneficiary of an inherited IRA who is over age 70 ½ can make charitable gifts of required distributions

17

Qualified Charitable Distribution
 -- Lifetime Gifts from IRAs --

- This law effectively makes an IRA into a charitable foundation
 - [seniors don't need a private foundation or a DAF if they have an IRA]

New for 2023:

- A person over age 70 ½ can make a once-in-a-lifetime transfer [maximum \$50,000] from an IRA to a charitable remainder trust or for a charitable gift annuity. *[from SECURE 2.0 legislation]*

18

IRA QCDs to CRTs and to CGAs

IRA owners over age 70 ½ are now eligible to make a once-in-a-lifetime deferred gift of up to \$50,000 directly from an IRA to a charity for a charitable gift annuity ("CGA") or to a charitable remainder trust ("CRT").

- The IRA distribution is excluded from the IRA owner's taxable income as QCD.
- Beneficiary of CGA or CRT can only be the IRA owner and/or that person's spouse.
- The income interest must be non-assignable.
- All distributions made from the CGA or CRT will be taxed as ordinary income
- The CGA or the CRT must be funded exclusively with such IRA funds (no other assets can be commingled).
 - The \$50,000 limit means that a CRT will generally not be economically viable. Right now, the immediate use of this law will be limited to CGAs.
- The CGA must have a minimum 5% payout and must begin within one year

19

IRA QCDs to CRTs and to CGAs

➤ A CGA is a great option for seniors who want to support a charity and who also want to receive a steady and reliable income stream for the rest of their lives.

➤ A CRT will generally not be an economically viable option for QCDs, unless future legislation increases the \$50,000 limit or permits IRA distributions to be added to a CRUT that holds other assets.

20

Stretch IRA

- "Stretch IRA" means an inherited retirement account (e.g., IRA), where payments are gradually made over the beneficiary's life expectancy
- Until the enactment of the SECURE Act, it was fairly easy for any beneficiary who inherited a retirement account to receive distributions until (at least) the age of 83 (older for beneficiaries who inherited at an older age)
- Beginning 2020: General rule is a ten-year liquidation

21

Stretch IRA

“life expectancy”

Oversimplified: Half of population will die before that age, and half will die after

22

Stretch IRA

<u>Age of Beneficiary</u>	<u>Life Expectancy</u>	
30	83	53.3 more years
40	83	43.6
50	84	34.2
60	85	25.2
70	89	18.7
80	91	11.2
90	96	5.7

23

Why do people want a long stretch?

When administering a decedent’s estate, isn’t the usual objective to close the estate within a year of death and have everything distributed to the heirs and the beneficiaries?

24

Distributions from Inherited Retirement Accounts Are Taxable Income
Income In Respect of A Decedent "IRD" – §691

- No stepped up basis for retirement assets
- Distributions from inherited retirement accounts are usually taxable income to the beneficiaries.

25

USUAL OBJECTIVE:
Defer paying income taxes
in order to get greater cash flow

	<u>Principal</u>	<u>10% Yield</u>
• Pre-Tax Amount	\$ 100,000	\$ 10,000
• Income Tax on Distribution (40%)	<u>40,000</u>	
• Amount Left to Invest	\$ 60,000	\$ 6,000

26

RETIREMENT PLANS SUBJECT TO THE LAW

- Section 401(a) - Employer pension, profit sharing and stock bonus plans *[incl. 401(k)]*
- Section 408 – IRAs
- Section 403(b) - School and charity employers
- Section 457(b) plans - Government and tax-exempt employers

27

Distributions After Death

Company policy may require faster liquidation

- Employer might require account of deceased employee to liquidated in just one year
- No such problem with IRAs
- Beneficiary of employer plan account can compel transfer to an inherited IRA

28

REQUIRED MINIMUM DISTRIBUTIONS * DEFINITIONS *

- **Required Beginning Date ("RBD")**
April 1 in year after attain age 73

29

Distributions After Death (for decedents who die in 2020 and later)

Maximum time period to empty account:

Ten years

2022 Proposed Regulations

- Death *before* "required beginning date"? (e.g., before age 74)
 - No required distributions in the first nine years. The account needs to be empty by December 31 of the tenth year after the year of the decedent' death, or else there is a 25% penalty on the balance.
- **Note: Before 2023, the penalty had been a 50% penalty.**
- **"SECURE 2.0" reduced the penalty to 25%**
 - And it is possible to have the penalty be as little as 10%.
(e.g., the taxpayer voluntarily pays 10% before receiving an IRS notice)

30

Distributions After Death
(for decedents who die in 2020 and later)

Maximum time period to empty account:

- Ten years

2022 Proposed Regulations – effective date: January 1, 2022

- **Death *before* “required beginning date”?** (e.g., before age 74)
 - No required distributions in the first nine years. The account needs to be empty by December 31 of the tenth year after the year of the decedent’ death, or else there is a 25% penalty on the balance.
- **Death *after* “required beginning date”?** (e.g., after age 73)
 - The proposed regs will require the beneficiary to receive minimum distributions every year in years 1 through 9, and the account must be empty at the end of the tenth year.
- **Failure to receive that year’s RMD triggers a 25% excise tax on the shortfall**

31

These are only proposed regs. Some argue that the final regs should not require any RMDs until the tenth year. Legislative intent.

- *October 2022:* IRS announces it will NOT apply this RMD rule in years 2021 or 2022.
- IRS Notice 2022-53 (October 7, 2022).

32

Distributions After Death
(for decedents who die in 2020 and later)

Maximum time period to empty account:

- Ten years (No RMD until year #10), or
- Remaining life expectancy of an “eligible designated beneficiary” (RMD every year)
 - surviving spouse -- minor child of the decedent
 - disabled individual -- chronically ill person
 - beneficiary within 10 years of age of decedent

33

MANDATORY DISTRIBUTIONS

[Assume sister inherits IRA at age 80 and dies at 94]

- D. John Mustard died this year at age 85.
- He named his sister, Honey (age 80 this year) as the beneficiary of 50% of the IRA. He named his two children as beneficiaries of the other 50% (25% apiece).
 - ❖ Honey is an eligible designated beneficiary (“EDB”) since she is not more than 10 years younger than D. John
 - ❖ The adult children are not EDBs

34

MANDATORY DISTRIBUTIONS

[Assume inherit IRA at age 80 and die at 94]

AGE

80

IRA Owner’s RMD in the year of death

- Prop. Reg. § 1.402(c)-2(j)(3)
- If the deceased owner had not withdrawn the entire RMD before the date of death, the balance must be distributed to *the beneficiary of the IRA that year.*
- [Proposed Regs have a grace period if full distribution wasn't taken in year of death: beneficiary can receive next year if before beneficiary's tax return filing deadline.
- Prop Reg § 54.4974-1(g)(3)]

35

MANDATORY DISTRIBUTIONS

[Assume inherit IRA at age 80 and die at 94]

AGE

81

Sister

As an EDB, the general rule is that the sister can receive distributions over her remaining life expectancy, rather than just over 10 years.
Does that rule apply here? **NO!**

85

90

100.00%

<< 10 years

91

empty

(non-EDB adult children are considered)

92

empty

36

SECURE Act (2019)
When enacted, most believed no RMDs in years 1 through 9
But the 2022 proposed regulations would require RMDs
if the IRA Owner (or employee) died after the RBD.

AGE	Sister	
81	Are there any distributions required between age 81 and age 90? Proposed Regs: Yes. There is an RMD every year	As an EDB, the general rule is that the sister can receive distributions over her remaining life expectancy, rather than just over 10 years. Does that rule apply here? NO!
90	100.00%	<< 10 years
91	empty	(non-EDB adult children are considered)
92	empty	

37

Prop. Reg. §1.401(a)(9)-5(d)(1) (2022)
Required minimum distributions from defined contribution plans.

EXPLANATION FROM THE PREAMBLE TO THE REGS:

"For example, if an employee died *after the required beginning date* with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the *beneficiary's* life expectancy as under the existing regulations for up to nine calendar years after the employee's death. In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required."

But would this rule apply to Honey? Honey is less than 10 years younger than D. John. So, Honey is an "eligible designated beneficiary"

38

Prop. Reg. §1.401(a)(9)-5(d)(1) (2022)
Required minimum distributions from defined contribution plans.

EXPLANATION FROM THE PREAMBLE TO THE REGS:

"these proposed regulations provide a general rule under which, if an employee has more than one designated beneficiary, and at least one of them is *not* an eligible designated beneficiary, then for purposes of section 401(a)(9), the employee is treated as not having an *eligible* designated beneficiary. As a result, the employee's interest must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death."

Sorry, Honey! D. John's adult children are also considered. So these payout rules *will* apply to you.

39

ACTIONS THAT CAN BE TAKEN BEFORE DETERMINATION DATE

• Divide into separate accounts

(do this before September 30 of the year after death)

For example, separate accounts when:

- one beneficiary is an EDB and another is not
- one beneficiary is a charity & can't pay by 9/30

40

MARRIED COUPLES: RETIREMENT ASSETS

Surviving spouse has an option that no other beneficiary has:

a rollover of deceased spouse's retirement assets to her or his own new IRA

(creditor protection, too!)

OBSERVE: If the beneficiary had been a surviving spouse (instead of a sister), then the surviving spouse could do a rollover to that spouse's own IRA to avoid a 10-year liquidation.

41

#1- With a separate account, **Honey** (an EDB) can take distributions over her remaining life expectancy, rather than over just 10 years.
 #2- With a separate account, **each child** will have a smaller RMD (in years one through nine) based on each child's young age.
 • **(Reason:** When there are several beneficiaries on the determination date, EVERY beneficiary's RMD is based on that of the OLDEST beneficiary)

Divide into separate accounts

For example, separate accounts when:

- one beneficiary is an EDB and another is not
- one beneficiary is a charity & can't pay by 9/30

42
