

JANUARY 2020 NEWSLETTER

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NEW YEAR, NEW IRA AND 401(K) LAWS: THE SECURE ACT HOW DOES IT AFFECT YOUR RETIREMENT PLANNING

FIRM ANNOUNCEMENTS

1. AWARDS:

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo has been named a 2019 Philadelphia Life Magazine and Suburban Life Magazine , Top Attorney for Business Law/Commercial Litigation and Estate Planning/ Administration.

Pozzuolo Rodden is pleased to announced that the Family Law Department of the Law Firm under the leadership of Judith Rodden, Esquire has been selected for Membership as one of the Family Law “10 Best Law Firm” for Pennsylvania by the American Institute of Family Law Attorneys.

2. UPCOMING SEMINARS:

Joseph R. Pozzuolo, Esquire and/or Jeffrey S. Pozzuolo, Esquire will be presenting the following continuing legal and accounting education (CLE/CPE) webinar seminars for Clear Law Institute:

- a) A Graying Population: Estate Planning for the Aging Middle Class Client for the General Practitioner & CPA;

- b) How Middle Income Families Should Prepare For Retirement; and
- c) Estate Planning for Business Owners

Please contact Christine Wainwright at Chrissy@Pozzuolo.com or Clear Law Institute at gqueen@clearlawinstitute.com if you would like the online details to attend any of these upcoming CLE/CPE seminars.

3. BLOGS:

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com during the past month:

- a. What Are 529 Plans And Financial Aid;
- b. What Is Involved In Asset Protection; and,
- c. You're The Executor Of An Estate, Here Are 7 Tips For Getting Through It.

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estate, business litigation and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Child Support- Paternity By Estoppel;
- b. Child Custody Relocation Rules And Requirements; and,
- c. Mother's Relocation To Another State With Minor Child Would Improve Child's Quality Of Life.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

NEW YEAR, NEW IRA AND 401(K) LAWS: THE SECURE ACT HOW DOES IT AFFECT YOUR RETIREMENT PLANNING

While most of us were celebrating the holiday season attending holiday events, Congress passed what is known as the "Setting Every Community Up for Retirement Enhancement Act" (the "SECURE Act"). The SECURE Act, effective January 1, 2020, made a number of changes to IRA and 401(k) laws as well as the tax advantaged 529 account laws in an attempt to encourage Americans to save more for retirement and education. Whether you are an employer or an employee, it is important to know and understand the new rules so you are in compliance and can maximize the benefits under them.

The Act is not all good or all bad. Some provisions like raising the required minimum distribution ("RMD") age from 70 ½ to 72 help. Whereas other provisions like requiring the full liquidation of Inherited IRAs by your beneficiaries within 10 years hinders

certain estate planning options which allowed IRA's income to be tax deferred for many years after your death.

A list of some of the more notable provisions of the Secure Act include the following:

Raising the RMD Age from 70 ½ to 72:

Prior to the SECURE Act, RMDs generally needed to start from retirement accounts as of the first April 1 in the calendar year after a participant turned age 70 ½. Now under SECURE Act you are required to receive your first RMD on April 1st of the calendar year after you reach age 72. This was pushed back to age 72 to take into account longer life expectancies and realities that many older Americans are working longer. The main benefit to this modification is it allows a few additional years for the retirement account portfolio to further grow tax free and defer the income taxation related to that account. However, note, this is only effective with relation to people who have turned age 70 ½ **AFTER** December 31, 2019 even if the participant has not received any retirement payments yet. By way of example, this means if a participant turned age 70 ½ in 2019, the first distribution must still be made prior to April 1, 2020. If the participant turned age 70 ½ on January 1, 2020, the participant will be 72 on July 1, 2021. The first required distribution is required two years later at April 1, 2022, the April 1st of the following calendar year.

Removal of Age Restriction for IRA Contributions:

Under prior law, contributions were not deductible if you were age 70 ½ years. The SECURE Act has removed the age cap and allows contributions after attaining the age of 70 ½. This aids the baby boomers who are working longer to continue to make tax deductible contributions.

Ten Year Liquidation Cap on Inherited IRAs:

Generally, if a participant dies with an account balance it can be inherited by that participant's individual death time beneficiary through what is called an "inherited IRA." RMDs were allowed to be made on an inherited IRA based on the life expectancy of that beneficiary. The estate planning goal was to string or stretch those payments out as long as possible to defer any taxes upon distribution to the beneficiary and to allow the inherited IRA to grow tax free for as long as possible. One strategy was to name someone much younger as the beneficiary to string the payments out over 20 to 30 years instead of, for instance, someone the same age as the decedent/participant who may only have a 5 to 10 year life expectancy. The SECURE Act closed this option for anyone dying after 2019 by limiting the RMD payment period to "within" ("not over") 10 years of the owner's death for beneficiaries except in the case of spouses, minor children (not grandchildren) up to the age of majority or age 26 if a student and a few other exceptions such as disabled individuals or chronically ill individuals.

401(k) Eligibility for Part-Time Employees:

While prior 401 (k) rules required employers to only include employees who have worked at least 1,000 hours during the plan year to participate in its retirement plan, the SECURE Act guarantees eligibility for employees who work three consecutive years of at least 500 hours and is age 21 or older by the end of the three year period.

Penalty-free Requirement Withdrawals for Birth or Adoption Expenses:

In general, if a participant receives a retirement plan distribution prematurely, there is a 10% excise tax in addition to all other taxes that would be due on the distribution. There are a number of exceptions to the excise tax relating to certain hardships and life events. The SECURE Act allows each parent to receive a penalty free distribution of not greater than \$5,000 (\$10,000 for a couple) for expenses within a one year period relating to the birth or adoption of a child without the typical 10% excise tax.

Shift Employer Investment Liability onto Annuity Providers:

Generally, under retirement plans, the employer of the plan has responsibility to ensure the investments of the plan are prudent. Normally, plan administrators invest in relatively safe assets that usually do not have the highest returns to minimize possible liability under this fiduciary obligation. The SECURE Act permits employers to choose annuity contracts from annuity providers as one form of payment option/investment which relieves the employer of investment liability as long as the annuity provider is in good standing with the state regulator. This may lead to an influx of annuity payment options so employers can relieve themselves of the responsibility and risk of a full due diligence review. Employees also may or may not want an annuity as it provides guaranteed income reducing their investment risk if the market crashes before, when or after they retire. However, the employee bears the risk if the annuity provider goes under. Also, some annuity contracts can be complicated for the employee to fully understand what benefit he/she is really receiving.

Increase in Credits for Starting a Retirement Plan:

There are a number of increased credits and loosened requirements to encourage employers to open or create retirement plans and employees to use plans. This includes an increased small business credit for retirement startup costs from \$500 to \$5,000, and loosened enrollment caps for automatic enrollment plans whereby employers can automatically deduct up to 15% of pay (up from 10%) as an elective deferral to such employee's 401(k) plan, absent an employee electing out of such treatment. This will indirectly increase retirement plan investments.

Use 529 Plan Funds to Repay Student Loans:

Last, somewhat unrelated, but tucked away in the SECURE Act, is the permission to use 529 Plan funds to pay off tax free up to \$10,000 of certain educational loans of a designated beneficiary and the siblings of such designated beneficiary. Prior to the SECURE Act, if there were excess 529 Plan funds, it could only be applied to the defined educational expenses of another eligible family member going to college. If one or more children or

grandchildren did not go to college or went to a vocational school instead, there may be excess funds that cannot be used. This risk hinders investment in such 529 vehicles. Now, excess 529 Plan funds can be used to pay for overbearing student loans, so if child A goes to college and has educational loans in excess of the 529 Plan account and child B did not go to college, the 529 Plan for child B could be used to help child A. Another example is if a parent has 4 children, child A's excess funds can be used to pay the student loans for each of his/her three siblings for a total of \$30,000. While this is not directly related to retirement, it helps address one of the, now, largest expenses student face which may hinder planning for retirement at a young age. . This allows for more optimal college tuition planning which means more left over for retirement after the fact.

Conclusion:

The SECURE Act has many bright spots by liberalizing the present retirement system in an attempt to encourage more retirement savings by extending the RMD age to 72, permitting contributions after age 70 ½, permitting part-time employee enrollment, allowing for birth/adoption expense withdrawals without penalty, increasing credits to encourage employers to create or establish retirement plans, and the 529 Plan tax free student loan repayment provision. On the other hand, the ten year inherited IRA distribution limit is generally frowned upon by planners and the shift of potential investment liability in favor of annuity contracts makes some skeptical that employers will shift their investment responsibilities by purchasing high commission annuity contracts underwritten by possibly questionable insurance companies. Many planners are also cynical on whether this is enough to make a difference as they feel that many of these changes are minor tweaks, but only time will tell. Regardless it is important to evaluate how these rules affect you as an employer or as an employee (or an individual in the case of the 529 Plan student loan rule change) to see if there are any estate planning opportunities created by these new changes.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax Articles

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

Deferred Compensation Rewards And Retains Key Employees

Design Buy-Sell Agreements For Maximum Utility

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How To Look, Act And Sound Like A Professional Corporation

How to Structure a Suitable Buy-Sell Agreement

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax

Planning Tool

Money Purchase Pension Plan Falls Out Of Favor

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Why An Employment Contract Is Mandatory

Estate Planning Articles

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

College Funding Tool Offers Estate Planning Advantage

Diversify Strategies For An Effective Estate Plan

Divorce and Estate Planning

Divorce Raises The Need For Performing An Estate Planning Review

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Estate Planning For Pet Owners

Remarriage Situations Can Raise Special Estate Planning Considerations

Six Proven Estate Planning Techniques

Special Needs Trust - An Estate Planning Tool For The Disabled

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Using Trusts To Maximize Family Protection And Minimize Estate Tax

Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.