Folks:

Take-Away: Missing a required minimum distribution (RMD) is not Armageddon. There still is hope.

Background: There are plenty of good reasons why an individual may miss taking his/her required minimum distribution. It is an understatement to say that the retirement plan distribution rules are easy to understand, what with changing required beginning dates (RBDs) and different rules for different plans (e.g., IRAs, qualified plans, SIMPLE IRAs, SEP IRAs, 403(b) and 457 plans.) It is probably more surprising that more account owners miss timely taking their required minimum distribution (RMD) from their retirement account. If an RMD is missed, key steps need to be taken to rectify that misstep.

What and When Was Missed?

> **RMD Deadline:** An RMD must be withdrawn by December 31 of the calendar year.
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> **April 1:** Unless, of course, if it is the account owner's first RMD, in which case the due date for that first, and only that first RMD, is April 1 of the following calendar year. Accordingly, if the account owner turned age 73 in November, 2023, his/her first RMD must be taken no later than April 1, 2024. Keep in mind that if the account owner delays taking his/her first RMD until April 1 of the following year, he/she will then have to take a second RMD in the same year, thus exposing those distributions to marginally higher income tax brackets.
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> **SECURE Act Confusion:** All beneficiaries of retirement accounts, including those who inherit a Roth IRA, are generally subject to the RMD distribution December 31 distribution rule. What has created lots of

confusion is the advent of the SECURE Act and its basic 10-year distribution rule. The beneficiary of an inherited retirement account must empty the inherited retirement account no later than December 31 of the year that follows the deceased account owner's 10^{th} year of death, but no annual RMDs will be required of that beneficiary. If, however, the account owner was subject to taking RMDs at the time of his/her death, then the IRS has interpreted the SECURE Act as requiring the beneficiary to take *annual* RMDs. Adding to this confusion is if the beneficiary qualifies as an *eligible designated beneficiary* (EDB) [a surviving spouse; a minor child of the account owner; a disabled or chronically ill individual; or a beneficiary who is less than 10 years younger than the deceased account owner], in which case the EDB may continue to use the *stretch* distribution rule prior to the SECURE Act, which means his/her *annual* RMD is based on his/her life expectancy, not the basic 10-year and its emptied rule. It is easy to see how an RMD could be missed with all these different rules.

Example: Don inherited a Roth IRA from his father Donald in 2020 (who died of Covid.) Don is subject to the SECURE Act's 10-year distribution rule. Don will need to empty this inherited Roth IRA by December 31, 2030. Any amount still in the Roth IRA at the end of 2030 will be the RMD for that year. Any funds not distributed to Don by December 31, 2030 will be subject to a penalty.

Example: Don owned a traditional IRA. On Don's death he named his brother Eric, who is a couple of years younger than Don, as his beneficiary. Eric is an *eligible designated beneficiary* since he is less than 10 years younger than Don. Don died in 2024 at age 48, long before he was scheduled to take any RMDs from his IRA. As a result, Eric will not have to take a distribution from the inherited traditional IRA in 2024. However, if Eric so elects, he will have to start taking *annual* RMDs from the inherited IRA in 2025 based on the IRS's Single Life Expectancy Table. If Eric misses any one of these *annual* RMDs he will be subject to a penalty.

Penalties: The SECURE Act 2.0 made a positive impact when it reduced the penalty for the failure to take an RMD. Starting in 2023 the penalty for the failure to take an RMD was reduced from 50% to 25%. Moreover, if that mistake is timely corrected, the penalty is further reduced to 10% of the amount that should have been taken.

> ***Timely Corrected:*** A timely corrected RMD means taking the missed RMD and filing Form 5329 by the end of the *second* calendar year that follows the year for which the RMD was missed. This solution applies regardless of the reason the RMD was missed. Paying the 10% penalty option is not subject to the IRS's discretion.
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> **Example:** Don celebrated his 78th birthday in September, 2023. Don had an RMD for his traditional IRA for 2023 that he should have taken by December 31, 2023 but Don failed to do so, since he was distracted by his excessive cross-country travels. Don will owe a 25% penalty on the amount that he failed to take. Don's penalty will be reduced to 10% if he takes his 2023 RMD and he pays the 10% penalty by December 31, 2025 by filing Form 5329.
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> **Example:** Robert inherited an IRA from his mother who died at age 70 in 2018. Because the IRA was inherited by Robert before the SECURE Act, Robert is allowed to take *annual* RMDs from the inherited IRA using *stretch* distributions using his life expectancy to calculate the RMD. Unaware of these rules, Robert failed to take any distribution from his late mother's IRA. This omission was discovered in 2024 by Robert's CPA. Robert will be subject to the 50% penalty on his missed RMDs from 2019, 2021 and 2022. [The CARES act waived all penalties for 2020.] For Robert's missed RMD in 2023 Robert will owe a 25% penalty, or a 10% penalty if his mistake is timely corrected. Robert might consider seeking an IRS Waiver.

IRS Waivers: While before 2023 the IRS could impose a 50% penalty on an IRA owner or an IRA beneficiary for their failure to take an RMD, often that penalty was waived by the IRS if the owner/beneficiary filed a Form 5329 and provided with the Form a reasonable explanation. Often the IRS did not even respond to the request to excuse the 50% penalty. With the reduction in the penalty from 50% to 25% with the SECURE Act 2.0, the question arose whether the IRS would continue to waive the penalty if the owner/beneficiary followed the same procedure, i.e., file Form 5320 and provide a reasonable explanation. Apparently Form 5329 used in 2023 confirms that it can still be used to seek an IRS waiver of the penalty.

> **Form 5329:** This Form is used for many different IRAs penalties, not just missing an RMD, e.g., health savings accounts, education savings accounts, etc. This Form is filed along with the owner/beneficiary's annual income tax return, although it can also be filed as a stand-alone filing. On the Form the owner/beneficiary provides an explanation of the *reasonable cause* for the missed RMD. A penalty in not paid when the Form is filed; rather the penalty is not paid until the IRS responds to the request. As noted, if the IRS decides to grant the waiver based upon the Form it will simply not respond. If the request is denied, only then will the IRS send a notice requesting payment of the penalty. Unfortunately, if several years of missed RMDs is the problem (see Robert's example above) then a Form 5329 must be filed for each year the RMD was not taken.

> ***Reasonable Cause:*** Unfortunately, the IRS does not publish rejections of waiver requests, so it is impossible to predict what constitutes *reasonable cause* in the eyes of the IRS. Perhaps a lack of understanding due to the various retirement plan rules, or rule changes might suffice. Or medical issues or a death in the family might work. Or a change in employment status or change in residence might work. [Regulation 54.4974-2, A-7(a).] A few Private Letter Rulings have explained when there was a *reasonable error* that was sufficient to justify the failure to take an RMD. In PLRs 2014-37025 through 2014-37034 the distribution from an IRA was prevented by a court order pending the outcome of bona fide litigation among the parties who were

entitled to the account. The IRS found that the court order that prevented access to the IRA was *reasonable cause* for the failure to take the RMD.

Statute of Limitations: As has been covered in earlier missives, the SECURE Act 2.0 created a 3-year statute of limitations for missing an RMD. That limitations period starts with the tax filing deadline, *not including extensions*, for the year for which the RMD is missed.

Conclusion: Missing an RMD is something to avoid if possible. It is easy to 'fix' a missed RMD by simply taking the missed RMD and filing Form 5329 and provide a short narrative of the reason why the RMD was not taken. No fee is required to file Form 5329, nor must be penalty be paid until the IRS formally rejects the waiver request.