RMD Final Regulations

Take-Away: In its final required minimum distribution (RMD) regulations, the IRS confirmed that if the deceased IRA owner was over his/her required beginning date (RBD) at the time of his/her death, the beneficiary of that inherited IRA must take *annual* RMDs over the 10 years that follow the IRA owner's death.

Background: The IRS surprised a lot of people when it published its Temporary Regulations to implement the SECURE Act regarding when a beneficiary must take distributions from an inherited IRA if the decedent was over his/her required beginning date (RBD), which is currently age 73. The IRS's Temporary Regulations provided that despite the SECURE Act's 10-year *new* distribution period for an inherited IRA (no distribution is required until the 10th anniversary of the account owner's death), if the deceased account owner was then taking RMDs because he/she was over his/her RBD, the beneficiary who inherited the decedent's IRA must take *annual* RMDs from the inherited IRA for the following 10 years, if not earlier, using their own life expectancy to calculate their *annual* RMD amount. This Temporary Regulation triggered an outpouring of complaints when the IRS invited comments that it was too narrow an interpretation of the SECURE Act and it was contrary to Congress's intent when it adopted the SECURE Act. Since the Temporary Regulations were published, many have watched and waited to see if the IRS would change its initial interpretation of the SECURE Act. Sadly, the IRS did not listen to the thousands of comments that it received.

Final SECURE Act Regulations: On July 18, 2024, the IRS published its long-awaited Final Regulations regarding the SECURE Act and addressed additional issues arising from the SECURE Act 2.0. The Final Regulations incorporate the changes the SECURE Act made to IRC 401(a)(9) regarding RMDs. These changes apply to qualified plan accounts, e.g., a 401(k) account, IRAs, 403(b) plans, and eligible deferred compensation plans.

Effective Date: The effective date for the Final Regulations is on and after September 17, 2024.

RBD Rule: When the IRA owner dies after his/her required beginning date (RBD) the IRS concluded that both IRC 401(a)(9)(B)(i) and IRC 401(a)(9)(B)(ii) apply unless the beneficiary is an *eligible designated beneficiary* who can take life expectancy payments under IRC 401(a)(9)(B)(iii), and that "*annual* distributions generally must continue although full distribution of the account owner's interest must be made by the 10th anniversary of the account owner's death." This means that the 'at least as rapidly' wording in these Tax Code sections controls, thus requiring *annual* RMDs to be taken from the inherited IRA if the owner was beyond his/her RBD.

Annuities: The Final Regulations also add an alternative when the account owner uses a portion of his/her retirement account to purchase an annuity contract. The Final Regulations provide that a qualified plan may permit a plan participant to elect to satisfy IRC 401(a)(9) and it's RMD requirement for the annuity contract and the participant's account balance in the aggregate by adding the fair market value of the annuity contract to the remaining account balance and treating payments under the annuity contract as distributions from an 'individual' account. That said, we are left guessing how the fair market value of the annuity contract is to be determined.

Rollovers: The Final Regulations also address the rollover of a distribution from a qualified plan to another eligible retirement plan under IRC 402(c). The amount distributed from a qualified plan is generally excluded from income if it is transferred to an eligible retirement plan within 60 days after receipt.

Excise Taxes: The Final Regulations also address the excise tax imposed on payees when the amount distributed is less than that that taxable year's required minimum distribution. [IRC 4974.] That excise tax is 25% of the amount by which the RMD for the tax year exceeds the amount that is actually distributed in that tax year. Note, however, that this excise tax may be waived by the IRS where the failure to distribute was due to reasonable error and steps are being taken to remedy the shortfall.

SECURE Act 2.0: Since the SECURE Act 2.0 was enacted after the Temporary Regulations were issued in 2022 for the SECURE Act, the IRS announced that it is finalizing some rule changes that are required by the newest SECURE Act, including:

The proposed rules specify that the applicable age for an account owner who is born in 1959 is age 73 for purposes of the RBD.

The proposed rules address how to determine the fair market value of an annuity contract purchased with a portion of the account owner's retirement account.

The proposed rules also provide that certain Roth account distributions are *not* treated as RMDs and can be rolled over to a Roth IRA if otherwise eligible.

The proposed rules also address: (i) the treatment of corrective distributions under IRC 4974; (ii) spousal elections; and (iii) divorce and separation agreements.

Finally, the proposed rules provide an exception to the new minimum distribution requirements for multiple beneficiaries in the case of an outright distribution to a trust beneficiary.

Conclusion: In its Preamble to the Final Regulations that IRS clearly indicated that it strongly disagreed with the numerous comments that it received about its interpretation of RMDs when the account owner died after his/her required beginning date (RBD.) This interpretation requires *annual* distributions to the beneficiary who inherits the retirement account which applies to all qualified plans, IRAs, 401(b) plans, and deferred compensation plans (IRC 457(b).) This interpretation that requires *annual* distributions from an inherited retirement account is effective starting on January 1, 2025.