See Through Trusts - a Small Reprieve

Take-Away: Qualifying a trust as a *see-through* trust just got a bit easier with the SECURE Act's Final Regulations.

Background: Many of us struggle to understand the IRS's *see-through trust* rules when an IRA or other retirement account is made payable to an irrevocable trust. Normally only individuals can qualify as designated beneficiaries of a retirement account. A trust is not an *individual.* However, with a *see-through* trust, then the individual beneficiaries of the trust can qualify as the designated beneficiaries for retirement plan distribution purposes. If the trust meets the *see-through* trust requirements, then it is allowed to use the SECURE Act's 10-year payout period or, in some cases, stretch the distribution period to the trust even longer. If the trust does not qualify as a *see-through* trust, then the payout period can be reduced to 5 years. Thus, it is important for a trust to meet the *see-through trust* rules to avoid the compressed 5-year distribution period for the retirement account.

See-Through Trust Rules: To qualify as a *see-through* trust, the trust must meet the following requirements: (i) the trust must be valid under state law or would be but for that fact that there is no trust corpus; (ii) the trust is irrevocable, or the trust must contain language to the effect that it becomes irrevocable on the death of the retirement account owner; (iii) the beneficiaries of the trust are identifiable; and (iv) a copy of the trust instrument must be provided by the trustee to the plan administrator or IRA custodian no later than October 31 of the year that follows the year of the retirement account owner's death. If these requirements are not met, then the distribution of the retirement account or IRA to the trust must be over a period of no more than 5 years.

Final SECURE Act Regulations: The Final IRS Regulations that pertain to *see-through* trusts 'tweaked' the last requirement identified above with respect to furnishing a copy of the trust instrument to the plan administrator or IRA custodian. The first three conditions or requirements remain the same. Under the Final Regulations. The requirement to furnish trust documentation is now simplified for trusts that are retirement account beneficiaries.

- Qualified Plans: A plan administrator can require the trustee to provide a list of trust beneficiaries with a description of the conditions of their entitlement to benefits/interests under the trust instead of receiving a copy of the actual trust instrument.
- IRAs: For trusts that are IRA beneficiaries, the furnished documentation requirement is eliminated. A trustee of a *see-through* trust is no longer required to provide the trust instrument to the IRA custodian.

Conclusion: The *see-through* trust rules seem to add just another layer of complexity to the already complex retirement plan distribution rules. The elimination of the requirement to furnish a copy of the trust instrument by the October 31 deadline date is a simplification that is appreciated by trustees faced with administering the trust, especially in light of the number of IRAs that are made payable to *see-through* trusts these days. Just one less step that the trustee must take in its administration of the trust.

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