July 15, 2022

The Honorable Charles P. Rettig
Commissioner of Internal Revenue
Internal Revenue Service
CC:PA:LPD:PR (REG-105954-20)
Room 5203; P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Comments to Proposed Regulations on Required Minimum Distributions from Inherited IRAs

Dear Commissioner Rettig:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee has been authorized by the TXCPA Board of Directors to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the view or policies of the TXCPA.

Comments and Request for Relief

We are writing to address some problems and urge relief from penalties and other inequities that will result from the IRS proposed regulations[1] related to required minimum distributions (RMDs) from inherited IRAs.

We suggest the following action:

1. We believe the new rules will create inequities and hardships and are inconsistent with clear statutory language of the *Setting Every Community Up for Retirement Enhancement Act* (SECURE Act of 2019) contained in the Further Consolidated Appropriations Act, 2020.[2] We, therefore, request that the proposed regulations be reconsidered and any distribution requirement prior to the final year of the 10-year period be removed to reflect the clear language of the statute as discussed below.

If the regulations are not withdrawn, we suggest the following remedial actions:

2. Consider deferring the effective date of RMDs for at least 2021 and 2022. Alternatively, make the new rules effective only for the year after final regulations are promulgated. Taxpayers should not be penalized by a retroactive requirement that is contrary to a reasonable interpretation of earlier guidance.

3. Provide extended payment options for IRAs that are heavily invested in illiquid assets. There is authority under IRC section 6161 to extend payments or structure them in a way that recognizes potential liquidity

[1] REG-105954-20
[2] P. L. 116-94

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problems in individual retirement arrangements, similar to estate taxes where a significant part of the estate is comprised of a family farm or business. Without this relief, many taxpayers may not have the wherewithal to pay a sudden (and unexpected) large tax liability if the IRA consists primarily of illiquid assets resulting in in-kind distributions.

4. We also recommend penalty relief for custodians who may have erroneously provided taxpayers with incorrect IRA balances and RMDs on Forms 5498 for the years 2021 and 2022.

Background

On Feb. 24, 2022, the IRS issued proposed regulations requiring that minimum distributions from inherited IRAs be made over a 10-year period beginning in 2020 for IRAs inherited after 2019. This is inconsistent with the underlying statutory language in clause 401(a)(1)(H)(i) of the SECURE Act,[3] which only requires that the distributions be completed within 10 years.

The statutory language of clause 401(a)(1)(H)(i) of the SECURE Act that amends IRC section 401(a)(9) reads in part as follows:

> "IN GENERAL.—Except in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)—(I) shall be applied by substituting '10 years' for '5 years', and (II) shall apply whether or not distributions of the employee's interests have begun in accordance with subparagraph (A)."[4]

The statutory language of the referenced IRC section 401(a)(9)(B)(ii) is as follows:

> "5-year rule for other cases.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee."[5]

The Joint Committee on Taxation's explanation repeated this language twice:

> "Thus, the entire interest must be distributed by the end of the tenth calendar year after the death of the designated beneficiary."[6]

> "Thus, in the case of an ineligible beneficiary, distribution of the employee (or IRA owner's) entire benefit is required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death."[7]

Importantly, the U.S. House Ways and Means Committee Report (on the SECURE Act) (House Rep. 116-65, dated May 16, 2019) echoes this intent:

> "Under the provision, the five-year rule is expanded to become a 10-year period instead of five years ("10-year rule"), such that the 10-year rule is the general rule for distributions to designated beneficiaries after

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[3] Ibid.
[4] IRC sec 401(a)(9)(H)(i)
[5] IRC sec 401(a)(9)(B)(ii)
[6] Joint Committee on Taxation, Description of H.R. 1994, p.77.
[7] Ibid., p. 74.

> death (regardless of whether the employee (or IRA owner) dies before, on, or after the required beginning date) unless the designated beneficiary is an eligible beneficiary as defined in the provision. Thus, in the case of an ineligible beneficiary, distribution of the employee (or IRA owner's) entire benefit is required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death."

Similar language was included in IRS Publication 590-B Distributions from Individual Retirement Arrangements.[8]

Additionally, there were no instructions on how to calculate the required distributions if they were to be taken over 10 years, further indicating that distributions were not required until the end of the 10-year period.

These indicia led taxpayers, financial institutions and tax professionals to believe payments must only be completed by the end of the 10th year, not paid over the 10-year period.

Practical Problems with the Proposed Regulations

Taxpayers, IRA custodians, investment advisers, estate planners and other professionals were not aware that minimum distributions would be required in 2021 until the regulations were proposed, which was not until Feb. 24, 2022. Accordingly, making taxpayers subject to a 50% penalty on their failure to make distributions for a prior year (in addition to any income tax on the distributions) is absolutely inappropriate. This penalty is particularly harsh due to the late guidance.

The regulations have put banks, brokerages, investment advisers, estate planners, IRA custodians and other professionals in the awkward position of having given advice that retroactively turned out to be incorrect and may result in heavy client penalties. The Forms 5498 that have been provided by banks, brokerages and IRA custodians to beneficiaries that presented IRA balances and RMDs believed to be correct at the time the forms were issued may now have to be reissued to accommodate the changes imposed by the recent guidance.

The proposed regulations would require many beneficiaries of IRAs to pay taxes on two or more years of RMDs, which may force them to liquidate investments at a time when stock prices are significantly depressed due to a variety of economic factors. Had the IRS guidance on RMDs been timely, these taxpayers would have been able to sell some assets at higher prices in order to fund the required distributions.

Even assuming that the taxes and penalties can be paid, the changes in the proposed regulations could cause significant cash-flow problems for IRA beneficiaries.

In some cases, taxpayers, estate planners and investment advisers expected that required distributions would come at the end of 10 years, and the change in the proposed regulations cause at least two potential problems.

First, changing the timing of taxes could result in an unfairness in some estates where the earlier tax payment affects the value of the IRA. For example, the value of an IRA inherited by one child may be reduced by accelerating taxes and be less than an intended equal-value transfer of non-IRA assets to another child.

Second, investments may have been made in illiquid assets that may be difficult or even impossible to sell to pay taxes on the distributions, such as a mortgage or a long-term bond.

[8] IRS Publication 590-B (2021)

Adding to the complexity is the fact that many, if not most, practitioners may be unaware their clients have potential liability for taxes and penalties for failure to take RMDs because the notice of proposed rulemaking was issued during the tax filing season.

Summary

Based on the above, we believe it is only fair and reasonable to change these proposed regulations to provide relief to taxpayers and tax professionals, as well as other affected professionals and the IRS. We believe that revising the proposed regulations to require RMDs only by the end of the 10th year, as stated in the statute, would be fair and consistent with the law. Alternately, a deferral of the RMDs until 2023 would provide relief for the severe penalties and hardships that would be the result of the proposed regulations.

The Texas Society of CPAs wants to help the IRS in the efficient administration of our tax laws. We would be pleased to further discuss our comments with you or your staff. Please feel free to contact me at 214-749-2462 or at dcolmenero@meadowscollier.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tx.cpa.

Sincerely,

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Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by David Colmenero, J.D., CPA; Rick Allen, CPA; Julie Dale, CPA; David P. Donnelly, CPA; and Nathan S. George, CPA.

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The Honorable Lily Batchelder, Assistant Secretary for Tax Policy
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