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Employee Benefit Plan Review

# New Rules Impacting IRAs: An Update on the CARES Act and SECURE Act

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Late in 2019, as part of an appropriations bill, Congress passed the SECURE Act, which changed a number of rules regarding distributions from qualified retirement plans and IRAs. In late March, as part of the COVID-19 financial relief legislation, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, which provided some additional rules on distributions from qualified retirement plans and IRAs for 2020.

**The CARES Act provides special tax rules for any taxpayer who is eligible to take a "coronavirus-related distribution," or CRD, from a qualified retirement plan or individual retirement account ("IRA").**

In June, the Internal Revenue Service ("IRS") issued several notices that provide more details on both of these acts. This article covers two primary topics: the coronavirus-related distribution rules and the 2020 required minimum distribution ("RMD") waiver rule.

## Coronavirus-Related Distribution Rules

The CARES Act provides special tax rules for any taxpayer who is eligible to take a "coronavirus-related distribution," or CRD, from a qualified retirement plan or individual retirement account ("IRA").

### *Who Does It Apply To?*

The rule applies to any individual taxpayer who has either a qualified retirement account that permits a CRD, a traditional IRA, or an inherited traditional IRA. The taxpayer or the taxpayer's spouse or dependents must have experienced certain financial hardships as a result of COVID-19, such as contracting the coronavirus, having a job loss, experiencing a reduction in pay or hours, closure or reduced operating hours of his or her business, having a job offer rescinded or delayed, or experiencing an inability to work due to the lack of childcare that is related to the pandemic.

### *What Is Permitted?*

If eligible, a taxpayer may take one or more distributions from a traditional IRA or a qualified employer plan that permits a CRD. The tax benefits of a CRD only apply to distributions that occur between January 1, 2020 to December 31, 2020, and only for distributions, from all qualified plans, that total up to $100,000.

*What Is the Tax Benefit?*

If a taxpayer is under age 59-1/2, there is no 10 percent early withdrawal penalty (or 25 percent penalty for "SIMPLE" IRAs). The distribution is still taxable. If a taxpayer takes a CRD, he or she will receive a Form 1099-R reporting the distribution as taxable. However, the taxpayer has a few options for reporting and paying the associated tax liability:

**If a taxpayer is under age 59-½, there is no 10 percent early withdrawal penalty (or 25 percent penalty for "SIMPLE" IRAs).**

- The taxpayer can elect to include the distribution, ratably, as taxable income over three years or as all taxable in 2020. He or she will need to make this election when filing a 2020 tax return, on new Form 8915-E Qualified 2020 Disaster Retirement Plan Distributions and Repayments. This election cannot be changed once made.
- If the distribution is eligible for a rollover, the taxpayer can recontribute the distribution to a qualified plan or traditional IRA within three years (measured from the day after the first distribution) and not be taxed.
    - Not all distributions are eligible for rollover. If a CRD is a required minimum distribution (see the next section) or a distribution from an inherited IRA, the taxpayer may not roll over or recontribute the distribution to avoid being taxed.

If the recontribution of a CRD occurs in a year after the CRD is reported and taxed, the taxpayer will need to amend the prior year's tax return. For example, if a taxpayer elects to report and pay all of a CRD as taxable in 2020, and then recontributes that sum in 2022, he or she will need to file an amended 2020 tax return, amending Form 8915-E to report the recontributed amount. If, however, the taxpayer places his or her 2020 tax return on extension (so it is due by October 15, 2021), and makes a recontribution of the CRD on or before that date (e.g., on October 13, 2021), the taxpayer may report the recontribution on the 2020 Form 8915-E and eliminate any tax payable on the distribution.

If a person makes a three-year election to report and pay tax on a CRD but dies before the three-year period ends, the remaining unreported amount becomes taxable in the year of death.

### Should a Taxpayer Take a CRD?

Whether it makes financial and tax sense to take a CRD is highly fact specific.

First, if the person only has employer-sponsored qualified retirement plans, those plans must permit a CRD.

Second, the person needs to look at his or her current financial circumstances, need for cash, and tax rates in 2020 and balance those against his or her ability to recontribute the CRD in the next three years, future retirement needs, and potential future tax rates.

**Whether it makes financial and tax sense to take a CRD is highly fact specific.**

If the taxpayer does not have a financial need for a distribution from a retirement plan or IRA but thinks he or she will pay a lower tax in 2020 (or over the next three years) than in the future, a Roth conversion of a qualified plan or IRA may be a better option than a CRD. A good financial planner or accountant may be able to assist the taxpayer in analyzing the financial and tax benefits of taking a CRD.

### 2020 RMD Waiver Rule

The CARES Act waived all RMDs for qualified plans and IRAs, including inherited IRAs, for 2020.

*Who Does It Apply To?*

RMDs are the required distributions for individuals who are over age 70-1/2 (for individuals born before July 1, 1949) or who have retired or for any individual, trust, or estate that is the beneficiary of an inherited IRA. For individuals who were born on or after July 1, 1949, RMDs do not begin until age 72 (which will be in 2021 at the earliest).

*What Is Permitted?*

If a taxpayer normally would have an RMD for 2020, including an RMD for an inherited IRA, he or she does not have to take the distribution in 2020. The taxpayer may take it, but it is not mandatory. In addition, if he or she already took part or all of a 2020 RMD, the taxpayer may recontribute that distribution to the same qualified plan or IRA, so long was the recontribution is made by August 31, 2020, or within 60 days of the withdrawal for a non-inherited IRA or qualified plan.

**If a taxpayer normally would have an RMD for 2020, including an RMD for an inherited IRA, he or she does not have to take the distribution in 2020.**

Typically, individuals are not permitted to recontribute or return an

RMD, and beneficiaries of inherited IRAs are not permitted any recontribution of a distribution, even a distribution made in error. However, the IRS is permitting recontributions since the CARES Act was only issued in late March and many people had already taken or begun taking their 2020 RMD.

### *What Is the Tax Benefit?*

A taxpayer does not have to report and pay tax on retirement plan or IRA distributions for 2020 unless he or she opts to take the distribution or fails to make a recontribution. If the taxpayer typically directs part of an RMD as a direct charitable contribution to avoid the tax reporting on the distribution, he or she still may make this charitable contribution, even in the absence of an RMD for 2020.

### *Future Distributions Impacted by 2020 RMD Waiver*

If a taxpayer previously inherited an IRA that is required to be distributed within five years of the IRA owner's death, the year 2020 will not count in that five-year period. If he or she inherits a qualified plan or IRA in 2020 and is subject to either the five-year or 10-year distribution period, these periods are not extended due to the waiver of the 2020 RMD.

Finally, if a taxpayer inherited an IRA from someone who died in 2019, he or she must typically make an election regarding distribution of that inherited IRA by the end of 2020. This election can be deferred until the end of 2021. However, the date for determining the RMD for an inherited IRA has not changed. The determination of who is a beneficiary of the inherited IRA or qualified plan still has to be made by September 30, 2020.

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