ORSON AND BRUSINI LTD

COUNSELORS AT LAW

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<u>Congress Makes Major Changes Affecting Estate Planning with Retirement Accounts</u>

In December, Congress enacted The Setting Every Community Up for Retirement Enhancement Act of 2019 which has come quickly to be known as the SECURE Act. Taking effect on January 1, 2020, the law makes major changes to planning with retirement accounts. One of the most notable changes is to what everyone refers to as "the stretch IRA". Simply put, the IRA owner's ability to lessen the adverse income tax treatment of the required minimum distribution (RMD) from Individual Retirement Accounts after death by naming a young beneficiary who could "stretch out" the RMD distributions by using his or her long life expectancy <u>has ended abruptly</u>. The maximum "stretch" period permitted by the SECURE Act is 10 years.

However, as you might expect, there are exceptions to this new "10-year rule". They include:

- If you name your spouse as the primary beneficiary of your IRA, the 10-year rule does not apply.
- If the beneficiary of your IRA suffers from a chronic illness, or is disabled, the 10-year rule does not apply.
- If you name a beneficiary of your IRA who is less than 10 years younger than you are, the 10-year rule does not apply.
- If your chosen beneficiary is a minor (or under age 26 if still in school), the 10-year rule does not apply ***until*** that young person attains the age of majority or age 26, as the case may be, when the 10-year rule kicks in.

Please note that beneficiaries of IRAs whose original account owner died prior to January 1, 2020 may continue to follow the prior law and enjoy the "stretch".

Also, please remember that your 19-year-old grandchild's ability under the prior law to "stretch out" RMD payments over his or her long life expectancy to lessen the income tax burden on your retirement assets was not a ***requirement*** - it was ***merely*** an income tax savings option. But your 19-year-old grandchild had the legal right to withdraw any amount, including ***all***, of your IRA anytime he or she wanted to do so after your death.

Additionally, the SECURE Act has not totally eliminated any potential income tax savings opportunities. For example, it does not require RMD withdrawals be made in each of the 10 years – your designated beneficiary may plan to take no distributions from the inherited IRA until the 10th year.   And your beneficiary may structure a variety of distribution plans based on his or her financial circumstances – perhaps withdrawing one-half of the IRA in year 9 and the other half in year 10 to straddle 2 income tax years. Many other plans for the timing of the IRA withdrawals are available, so long as the entire IRA account is withdrawn within the 10-year period which begins at the death of the original IRA account owner.

Before you become confused or overwhelmed by the media reports on how dire this new tax treatment is to ***everyone's*** estate plan, please step back for a moment and consider ***your personal goals***. If you named your 9-year old (or 19-year-old, or 29-year-old) grandchild as the beneficiary of your IRA because your primary goal was using the "stretch" period which the prior law allowed, then you should review your estate plan promptly to learn what changes can be made to help ameliorate the income tax impact of the new law on your plan.   However, if your estate plan goals still include asset protection (for example, you have concerns about a beneficiary divorcing, or a beneficiary with substance abuse problems, or you have a special needs beneficiary to plan for and you want to choose who handles these funds, or your chosen beneficiary is a spendthrift, or you never thought it wise to name a 19-year-old as the direct beneficiary of your large IRA) then you may still want to use a trust as the designated beneficiary of your IRA in order to protect the distributions which are made. If your estate plan goals still include estate and generation-skipping transfer tax planning, you may still need a trust to help you achieve your goals, and your estate plan may still be in order and you may not need to concern yourself with this new law.

A few comments on naming a trust as the beneficiary of the IRA. It is important to pay close attention to the language of the trust, to make sure the trustee has the discretion to take distributions over the course of the 10 years, and is not inadvertently bound to taking the full distribution in any one particular year.   Even if you name a trust as contingent beneficiary of an IRA or qualified plan, you should review the trust language to make certain the trustee has the flexibility to plan over the 10-year period to mitigate the income taxes.

Ignoring the major change in income tax consequences which the SECURE Act causes is not in your and your family's best interests, of course. But you may find, after reviewing your goals and your current estate plan, that the SECURE Act is not particularly relevant to your planning goals, and income tax savings – while not to be passed up lightly – are not driving your plan.

The SECURE Act also changes the age at which you must begin to take your annual required minimum distribution from your IRA. In place of the prior rule (your first RMD was required to be made before April 1st of the year following the year in which you attained age 70 ½), the SECURE Act ***increases*** this age to 72.

Another positive provision in the SECURE Act is the elimination of the age restriction on making additional contributions to your IRA. Now, if you are working past age 70 ½ (the cut-off age under the prior law), you may continue to contribute to your IRA ***with no age restriction whatsoever***.

Additionally, the SECURE Act permits withdrawal of up to $5,000 ***without any penalty*** if used to pay expenses related to the birth or adoption of a child. Under prior law, a penalty would have been assessed on these withdrawals.

We invest time, effort and emotion in our estate and financial planning - for ourselves and our loved ones. Changes in the law, as well as changes in our personal circumstances, warrant a periodic review of a plan to make sure it continues to comport with our wishes. Your attorneys at Orson and Brusini Ltd. look forward to helping you review your current estate plan, or establish a new one, so that you may continue to accomplish your planning goals.

ORSON AND BRUSINI LTD
TRUSTS AND ESTATES PRACTICE GROUP

James V. Aukerman
Lynn Gifford Bria
Deborah DiNardo
Rebecca E. Dupras
Richard H. Gregory III
Lawrence D. Hunt
Lillian Magee Lloyd
Kristin N. Matsko

144 Wayland Avenue, Providence, Rhode Island 02906, Tel (401) 223-2100
336 Main Street, Wakefield, Rhode Island 02879, Tel (401) 788-9080
195 Broadway, Newport, Rhode Island 02840, Tel. (401) 846-7777