Retirement Planning Implications of the Secure Act

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Brian Oard: Aloha. We are live from the floor of the Hawaii Tax Institute in Honolulu, Hawaii. We are very fortunate to have one of the great speakers at the Hawaii Tax Conference, Steve Trytten, who recently joined forces with the law firm of Henderson, Caverly, Pum & Trytten, which is based out of San Diego, but Steve heads up their efforts in Los Angeles.

So Steve, you're speaking at Hawaii Tax on the subject of IRAs and qualified plans. It's a very interesting complex area, especially with the new Department of Labor rules. So, if you could just maybe start and give us some of the latest developments that have come up that are the subject of your talk.

Steve Trytten: Certainly those Department of Labor requirements are a big deal. The fiduciary standard is a sea change, I think, for many advisors and institutions handling these accounts.

The other thing that's getting a lot of attention is there have been a few different pieces of legislation over the last couple of years that would really change the rules as to how quickly you can take money out of a retirement plan if you've been designated as the beneficiary.

Under the current rules, a child who's named as a beneficiary might end up with more than twice as much net of all taxes if they can stretch it out gradually over their lifetime, and these new laws would greatly shorten it. One law was going to make it five years and the other law is going to be 10 years.

Alvina Lo: Is there anything that clients should be thinking about or doing in place so that they can make sure they receive the maximum benefit?

Steve Trytten: There's nothing you can do to grandfather the accounts that you own at the moment, but what I think can be done, and I would recommend any advisor consider doing this, is start anticipating the people who are going to need help so you're ready once it passes to review and update estate plans. Most trusts will need to be revised.

Brian Oard: Speak for your own experience that maybe you've drafted in the past and how the Secure Act will change this and why clients need to maybe move quickly.

Steve Trytten: When you want the long stretched out deferral, if you're a trust getting designated, it has to be drafted to fall into a couple of possible boxes. So one box is called a conduit trust. So anytime money comes from the plan to the trust, it can't stay there. It just keeps on moving out to the beneficiary. The other kind of trust is called an accumulation trust, but either way you're adding requirements into the trusts that wouldn't normally be there and they have side effects.

I think a good precaution we can all take now is to add a clause when we're drafting these trusts to limit the specialized language, only to plans that can actually be stretched.

Brian Oard: For our wealthier clients who are subject to transfer taxes at death, who have a large accumulated IRA or qualified plan balances, talk about strategies during a lifetime that might involve charitable elements that clients may have.

Steve Trytten: I think it's really important for advisors to first discuss concepts with clients in a nontax, nontechnical context. So the first question to my client is where do you want to see your wealth end? Do you want it to all end up with your children? Do you want some of it to go to charity? Forget whether you're going to get a tax break.

If people are young enough, it's better for the IRA or the Roth IRA to be held and stretched for them, and then for other assets to be given to charity. And it's best to give those other assets during life because you're saving both income tax and estate tax.

If that's not an option and it's going to happen at death, even then I would leave non-IRA assets if I'm satisfied, I'm going to get a good stretch with young beneficiaries. Now the Secure Act would certainly change that, and you'd almost always choose the retirement assets first for a charitable gift. People over 70 and a half, they can do up to a hundred thousand a year of their distributions straight to charity, which is more efficient from an income tax point of view than taking the distribution and then claiming a deduction. Under current law, my advice to people would be don’t go past your minimum distribution. Keep taking out the minimum because there’s so much long-term benefit. With the Secure Act that might change. People might say, well I don’t have as much to lose, and I want to make these gifts, I’m going to make them now.

For a deeper conversation on the issues discussed in this video please reach out to:

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