

SECURE ACT OPTIONAL PROVISIONS

Plan Withdrawals for Birth or Adoption (401(a) plan, 403(b) plan and 457(b) plan) - Distributions made after December 31, 2019

BENCHMARK: 10% of Ice Miller clients have adopted this provision.

CURRENT LAW:

Distributions from 401(a), 403(b), and governmental 457(b) plans and IRAs are generally included in gross income the year of distribution, and, except for distributions from governmental 457(b) plans, are subject to a 10% early distribution tax penalty if made prior to age 59 ½, unless an exception applies.

In-service distributions from 401(a), 403(b), and governmental 457(b) plans are generally not permitted, unless a specific exception applies. For example, distributions of elective deferrals or from custodial accounts under a 401(k) or 403(b) plan generally cannot be made in-service prior to age 59 ½, except in the case of financial hardship or disability.

In-service distributions from IRAs are permitted, subject to the 10% early distribution tax penalty.

Eligible rollover distributions from a 401(a), 403(b), or governmental 457(b) plan may be rolled tax-free to another eligible retirement plan within 60 days, subject to mandatory 20% withholding.

CHANGE:

The SECURE Act provides that a "qualified birth or adoption distribution" can be made from a defined contribution 401(a), 403(b) or governmental 457(b) plan or an IRA regardless of whether an in-service distribution would otherwise be permitted, and the distribution (i) is not subject to the 10% early distribution tax penalty, (ii) is exempt from 20% mandatory withholding, the 402(f)-notice requirement, and the direct rollover rules, and (iii) can be repaid to the plan at any time.

A "qualified birth or adoption distribution" is a distribution taken within one year of a birth or adoption up to \$5,000 in aggregate per birth/adoption, provided that the adoption is not of a child of the participant's spouse and the child is either under age 18 or physically or mentally incapable of self-support. The rule applies separately to each spouse. An employer is responsible for enforcing the \$5,000 limit only with respect to distributions from the plans it maintains in aggregate.

The participant can repay the distribution to a 401(a), 403(b), or governmental 457(b) plan or IRA in which he/she is a participant and to which rollover contributions can be made. A repayment to a 401(a), 403(b) or governmental 457(b) retirement plan cannot exceed the amount of the qualified birth or adoption distribution made from that plan and can only be made to that plan if the individual is eligible to make contributions to that plan. The repayment is treated for tax purposes as if it were a direct rollover of a distribution within 60 days.



SECURE ACT OPTIONAL PROVISIONS

Distribution Relief for Victims of Natural Disasters -Qualified disaster distributions made as early as January 1, 2018 and prior to the date that is 180 days after December 20, 2019.

BENCHMARK: 5% of Ice Miller clients have adopted this provision.

CURRENT LAW:

Distributions from 401(a), 403(b), and governmental 457(b) plans and IRAs are generally included in gross income the year of distribution, and, except for distributions from governmental 457(b) plans, are subject to a 10% early distribution tax penalty if made prior to age 59 ½, unless an exception applies.

In-service distributions from 401(a), 403(b), and governmental 457(b) plans are generally not permitted, unless a specific exception applies. For example, distributions of elective deferrals or from custodial accounts under a 403(b) plan generally cannot be made in-service prior to age 59 ½, except in the case of financial hardship or disability. In-service distributions from IRAs are permitted, subject to the 10% early distribution tax penalty.

Eligible rollover distributions from a 401(a), 403(b), or governmental 457(b) plan may be rolled tax-free to another eligible retirement plan within 60 days, subject to mandatory 20% withholding.

CHANGE:

The SECURE Act provides that a "qualified disaster distribution" can be made from a defined contribution 401(a), 403(b) or governmental 457(b) plan or an IRA regardless of whether an in-service distribution would otherwise be permitted, and the distribution (i) is not subject to the 10% early distribution tax penalty, (ii) is exempt from 20% mandatory withholding, the 402(f) notice requirement, and the direct rollover rules, and (iii) can be repaid to a plan or IRA in which the individual is a participant and to which rollover contributions can be made within three years, in which case it is treated for tax purposes as if it were a direct rollover of a distribution within 60 days. The qualified disaster distribution will be included in gross income ratably over the three-tax year period beginning with the tax year of distribution, unless the participant elects for this provision not to apply.

A "qualified disaster distribution" is a distribution taken by an individual who has been affected by a natural disaster that was declared a major disaster by the President during the period beginning on January 1, 2018 and ending on the date that is 60 days after December 20, 2019. A qualified disaster distribution does not include disasters that occur after December 20, 2019 or the California wildfire disaster areas.

A qualified disaster distribution is limited to \$100,000 in aggregate for each disaster. An employer is responsible for compliance with the \$100,000 limit only with respect to distributions from the plans it maintains in aggregate. A qualified disaster distribution is conditioned on the participant (i) taking the distribution on or after the first day of the disaster and before the day which is 180 days after December 20, 2019, (ii) having a principal place of abode in the presidentially-declared disaster area, and (iii) sustaining an economic loss by reason of the disaster.

