Unclaimed Property ADVISORY ■

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Federal Tax Update to IRAs Will (Further) Impact State Escheat Requirements

On December 20, 2019, President Trump signed into law H.R. 1865, the Further Consolidated Appropriations Act. In relevant part, the legislation includes provisions from the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, which was previously introduced in Congress as H.R. 1994. The SECURE Act impacts the taxation of retirement products in several respects, and certain of these changes will have a significant ripple effect on the unclaimed property landscape.

More specifically, Section 114 of the SECURE Act updates the age of required minimum distribution (RMD) for IRAs under the Internal Revenue Code from 70½ to 72. In other words, an IRA owner is not required to begin taking RMDs from his/her account until April 1 following the year in which the owner reaches 72. As provided by the bill, this amendment "shall apply to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after such date." Accordingly, this change does not impact the RMD requirements for an individual who reached 70½ during or before 2019.

The RMD update is significant for purposes of state unclaimed property laws, as a majority of such laws premise escheatment of the IRA on the owner's failure to take a distribution or otherwise interact with his/her account after the date a distribution is required to be made from the account pursuant to federal law, in addition to other requirements (in particular, the requirement that mail sent to the owner has been returned as undeliverable if the IRA contains securities). The SECURE Act will modify this standard by focusing the analysis on April 1 following the year in which the owner turns 72 rather than 70½. Although a majority of state unclaimed property IRA provisions reference the RMD date as provided in federal laws, notably, states that have adopted the 2016 Revised Uniform Unclaimed Property Act (RUUPA) expressly reference the date the owner turns age 70½. Because this date will no longer be relevant for tax purposes, these RUUPA states will need to modify their provisions to reflect age 72.

However, it is worth noting that the RMD revision is prospective and will not impact the escheatability of an IRA owned by a person who has already reached or will reach 70½ in 2019. Put another way, if an owner turns 70½ on or before December 31, 2019, he/she will be subject to an RMD requirement in April 2020. This means that the dormancy period for his/her account will begin running (potentially) on April 2020.

In addition, the SECURE Act repeals the maximum age for traditional IRA contributions. Previously, an IRA owner could not deduct a contribution to an IRA beginning with the year he/she attains 70½. Under the new law, however, an IRA owner will have the ability to deduct a contribution made to the account at any age. This change makes it somewhat more likely that an IRA may exhibit "activity" sufficient to keep the account from being escheatable even after the owner reaches the RMD age.

Overall, the SECURE Act reflects what appears to be an ongoing upheaval in the unclaimed property treatment of IRAs. Additionally, holders are staring down a January 1, 2020, deadline for implementing the IRS' 2018 directive to withhold tax on an IRA upon its escheatment. This deadline currently stands despite significant outreach from unclaimed property industry stakeholders – including the Securities Industry and Financial Markets Association, Holders Coalition, and National Association of Unclaimed Property Administrators – seeking to clarify numerous aspects of the ruling. (*See* "Withholding Rule for IRAs 'Pardoned' at the Last Minute" and "IRS Ruling on IRAs Raises Numerous Unclaimed Property Issues for Holders, Owners, and States Alike.") The withholding requirement raises the question of whether holders even have the right under federal securities or other laws to liquidate IRAs and then escheat the liquidated amounts (less withholding) to the states.

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