



Unclaimed Property ADVISORY ■

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Last-Minute Adoption of SECURE 2.0 Act Once Again Changes the Landscape for IRA Escheatment

On December 29, 2022, President Biden signed into law the Consolidated Appropriations Act, 2023, an omnibus bill containing more than 4,100 pages' worth of appropriations and other provisions. Significantly, the Act includes a division entitled "SECURE 2.0 Act of 2022," a development that the unclaimed property industry had been anticipating. In particular, Section 107 of the SECURE 2.0 Act increases the required minimum distribution (RMD) age for individual retirement accounts (IRAs) under the Internal Revenue Code from 72 ultimately to 75, which directly impacts the escheatment rules applicable to IRA assets in many states. The rapid enactment of this legislation occurring before the end of 2022 came as somewhat of a surprise. Though the industry had been watching two competing retirement bills (S. 4808, the Enhancing American Retirement Now Act, and H.R. 2954, the Securing a Strong Retirement Act of 2021) that were similar to the SECURE 2.0 Act make their way through Congress in 2022, both stalled out over the summer. The late inclusion of the SECURE 2.0 Act in the omnibus bill was unexpected, to say the least.

SECURE Act, Part 1

The Setting Every Community Up for Retirement Enhancement Act (the first SECURE Act) was signed into law on December 20, 2019. Among other things, that Act updated the applicable RMD age for IRAs from 70½ to 72. In other words, an IRA owner was not required to begin taking RMDs from his/her account until April 1 following the year in which the owner reaches 72 (rather than 70½). [This change](#) applied to RMDs required to be made after December 31, 2019, for individuals who attained age 70½ after such date.

A Primer on RMDs and IRA Escheatment

Whenever Congress changes the RMD rules, it has a direct impact on the escheatment of IRA assets under state unclaimed property laws. This is because a majority of those laws premise escheatment of such assets on the owner's failure to take a distribution or otherwise interact with the account after the required beginning date for taking RMDs pursuant to federal law, in addition to potential other requirements (for example, the requirement that mail sent to the owner has been returned as undeliverable). Most states have adopted one of two similar provisions addressing when the dormancy period for determining whether an IRA is escheatable begins to run:

- The 1995 Uniform Unclaimed Property Act triggers dormancy on the date "specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty."

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- The 1981 Uniform Unclaimed Property Act triggers dormancy on the date that distribution of “[f]unds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States” becomes “mandatory” under the terms of the account or plan.

That said, an increasing number of states have adopted the 2016 Revised Uniform Unclaimed Property Act (RUUPA), which expressly references the date the owner turns age 70½ rather than the RMD date or other date tied to federal law. However, several of these RUUPA-adopting states have subsequently updated their provisions (or deviated from RUUPA upon initial enactment) to reflect either age 72 in light of the first SECURE Act or a more general reference to the RMD date or federal law. For example, Indiana’s adoption of RUUPA in 2021 references the “date the apparent owner reaches the age at which the Internal Revenue Service requires a minimum distribution from the account,” similar to the 1995 and 1981 Act standards.

SECURE 2.0 Act’s Further Changes

Similar to the first SECURE Act, the SECURE 2.0 Act again changes the required beginning date for owners to take RMDs from their IRA accounts. In particular, the Act provides that for any individual who attains age 72 after December 31, 2022 and age 73 before January 1, 2033, the applicable age for RMDs is age 73. In addition, the applicable age for an individual who attains age 74 after December 31, 2032 is age 75.

Thus, in the states that have adopted an IRA provision similar to the 1995 Act or the 1981 Act, holders will need to update their unclaimed property rules engines to account for this immediate change in the RMD age from 72 to 73 and then ultimately to 75. These new SECURE 2.0 Act rules will apply to any IRA owner who was not yet age 72 as of January 1, 2023. For IRA owners who were already age 72 before January 1, 2023, the existing pre-SECURE 2.0 Act rules will apply (and thus no holder changes are required).

However, states that have adopted RUUPA or otherwise refer to a specific age of the owner rather than reference the RMD date will need to (perhaps again) consider undertaking legislative efforts to ensure that the unclaimed property standard does not conflict with federal law. This means that states that continue to utilize age 70½ or have adopted age 72 as the dormancy trigger should ideally replace those specific ages with a reference to the RMD date or federal law. In the alternative and at minimum, these states should replace the existing age with April 1 following the year the owner turns age 73 or 75 to be safe and to avoid having to make further legislative adjustments. Otherwise, customer IRAs will be at risk of escheating before the required beginning date for taking RMDs. On the other hand, it is possible that federal law may preempt state unclaimed property laws in these circumstances.

Given that the escheatment of an IRA represents [a taxable event for an owner](#), this is an issue that states should urgently address through legislative amendment. If states do not take action, holders that custody IRAs will need to carefully consider their options of achieving balance between compliance with state unclaimed property law and the safekeeping of customer assets.

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