
New Secure 2.0 Act – Key Provisions That May Affect You

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On December 29, 2022, President Biden signed the “Consolidated Appropriation Act, 2023” into law which includes the SECURE 2.0 Act of 2022 (“Secure 2.0”). Secure 2.0 incorporates important enhancements to regulations affecting retirement savings and ABLE accounts.

Delay in Start Date for Required Minimum Distributions (“RMDs”)

Among the most far-reaching of the changes brought about by Secure 2.0 is that distributions from retirement accounts can be further deferred. Prior to the Secure Act, account holders were required to begin taking RMDs at age 70½. The Secure Act extended it to age 72. Now, under Secure 2.0, individuals who attain the age of 72 after December 31, 2022 and before January 1, 2033, can delay the onset of their RMDs until they reach 73. Individuals who turn 74 after December 31, 2032, are not required to begin taking RMDs until age 75. If an account is earning 5%, excluding new contributions, the delay from 70½ to 73 will result in the growth of the account by an additional 7.6% before distributions are required to be taken.

Reduction in Surcharge for Failing to Take the Full RMD

Prior to the passage of Secure 2.0, the IRS imposed a 50% surcharge for failing to take the full annual RMD from retirement accounts. For example, if an individual took only \$40,000 of their \$50,000 RMD, a \$20,000 surcharge or penalty was imposed. Secure 2.0 reduces the surcharge, for tax years after December 29, 2022, by half, to 25%. Additionally, if the full amount is distributed by the earlier of the second year after the RMD was missed or before the IRS assesses the penalty, the surcharge is reduced to 10% for plans created under traditional IRAs and 401(a), 401(k), 403(b) and 457(b) plans. Be aware, any surcharge is counted as taxable income in the year in which the penalty is assessed!

New Rule for RMDs from Roth Plans

Beginning with tax years after December 31, 2023, participants in a 401(k), 403(b) or 457(b) plan with a designated Roth IRA feature will no longer have to consider the Roth accounts in their employer-sponsored plan when calculating their RMDs. This will preserve participants' account balances, allowing continued growth. Also, if the participant's FICA wages from the employer sponsoring the plan exceeded \$145,000 in the prior year, subject to annual cost of living adjustments in \$5,000 increments, the age 50+ catch-up deferrals can only be contributed to the Roth IRA.

Surviving Spouse Election to be Treated as an Employee

If a participant who has named his or her spouse as the sole beneficiary of a 401(a), 401(k) 403(b) or 457(b) plan dies before his or her required beginning date, the spouse may elect to defer taking the initial RMD until the year in which the deceased spouse would have attained his or her RMD age. Exercising this election could result in the calculation of the spouse's RMD under a more favorable life expectancy table which would otherwise have been available only to the participant.

Portability of 529 College Savings Accounts

Effective in tax years after December 31, 2023, a beneficiary of a 529 account that has been maintained for at least 15 years can rollover, to the beneficiary's Roth IRA, the lesser of (a) \$35,000 or (b) the aggregate amount contributed to the 529 account (plus earnings) during the five year period preceding the date of the rollover. This addresses concerns about over-contributions to the 529 account and continues favorable tax treatment when rolling over funds left in the 529 account into a Roth IRA.

Age Modification for Qualified ABLE Accounts

ABLE accounts are accounts for disabled individuals. While there are limitations to maximum permissible account balances, the beneficiary of the account is allowed to be the account owner, income earned by these accounts are not taxed, and the amount in the account is not subject to the resource limitations of governmental programs such as SSI, Medicaid or SNAP. For these reasons, these accounts are extremely beneficial to disabled individuals. Previously, to qualify for an ABLE account, it was necessary that the onset of one's disability occur before the individual turned 26 years of age. Under Secure 2.0, the individual will now qualify if the onset of the disability occurs before the individual turns 46.

If you or a loved one are affected by these changes, or if you have questions about their applicability to your circumstances, please telephone (516) 328-3200 and ask to speak with [Moriah Adamo](#), [Larry Berwitz](#) or [Maureen DiTata](#).