PALLAS
CAPITAL ADVISORS

Planning Commentary

July 2020

News Flash - *Rollover Decision Required by August 31, 2020!*

On June 23rd, the IRS released Notice 2020-51, "Guidance on Waiver of 2020 Required Minimum Distributions" in which they permit anyone who took a distribution that, but for the CARES Act would have been a Required Minimum distribution (RMD), to rollover that amount until August 31, 2020. Rolling over the distributed amount will allow the individual to avoid recognition of income, and as a result avoid the tax bill that would follow.

Background

Owners of traditional IRAs (including SEP IRAs and SIMPLE IRAs) must start taking RMDs from these IRAs for the year in which they reach age 70½ (the first RMD year), and continue every year thereafter.

RMD REQUIRED BEGINNING DATE EXTENSION

For those who did not have a first RMD year by December 31, 2019, the required beginning date has increased from age 70 ½ to 72. These individuals are not affected by the 2020 RMD waiver under the CARES Act, as the earliest their first RMD would be due is 2021.

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. As a more-than-$2-trillion-emergency fiscal stimulus package, the CARES Act was in response to the coronavirus disease (COVID-19) outbreak and its impact on the economy, public health, state and local governments, individuals and businesses.

The CARES Act includes a waiver of RMD for 2020 as part of the solution.

- At Pallas, we have contacted many of our clients who had been taking RMDs in the past but did not require that income to meet living expenses. We discussed the option to not take the distribution in 2020.
- The *problem* for some people, though, was that the CARES Act was passed on March 27th of this year. In many cases, people had already started to take their Required Minimum Distributions, either in one lump sum, or in regular installments. By the time the CARES Act happened, some individuals had already passed the 60-day rollover window, and so they were not eligible to put those dollars back into the retirement account.

Initial Guidance - IRS Notice 2020-23

The IRS tried to address some of the problem earlier this year in Notice 2020-23, where the deadline for completing a rollover was extended to July 15, 2020 if the rollover was required to be completed on or after April 1, 2020, and before July 15, 2020. This deadline was extended in response to the Emergency Declaration of the ongoing COVID-19 pandemic.

Many retirement account owners and beneficiaries that we have spoken with want to 'undo' those distributions that were no longer RMDs and put them back into a retirement account. Unfortunately, for retirement account owners whose 60-day rollover window had already closed, or where such rollovers would have been a violation of the once-per-year rollover rule, or where distributions were made to non-spouse beneficiaries, they were left with no choice to but to keep the distribution.

Additional Guidance - IRS Notice 2020-51

On June 23rd, the IRS released Notice 2020-51, which now provides even further rollover relief by:

- Extending the 60-day rollover window for all unwanted 2020 RMD distributions to the later of August 31, 2020 date or 60 days after receipt of the distribution.
- Excluding rollovers of amounts, that if not for the CARES Act would have been 2020 RMDs, from being counted as a rollover for purposes of the once-per-year rollover rule.
- Finally, while beneficiaries are explicitly prohibited from completing 60-day rollovers under the law, Notice 2020-51 essentially allows beneficiaries to temporarily ignore this portion of the Internal Revenue Code and rollover their 2020 inherited RMDs until as late as August 31, 2020.

A Common Question:

"What if we took monthly distributions? Does this now mean we can put back all of those monthly distributions?"

Yes. You can now take all those monthly distributions and roll them back over in one check as long as it is before August 31st. If you do not have the full amount now but will by August 31st, you can also put it back in multiple amounts. Those rollovers will not count for purposes of the once-per-year rollover rule.

Wait, The IRS Giveth?

Ultimately, the new guidance just released by the IRS provides a favorable outcome for people who took their RMDs earlier this year. However, some tax practitioners have pointed out that this is an unprecedented and potentially troubling move by the IRS, given that it does not actually have the legal authority to make this change. (It is, after all, the job of Congress to create and amend laws.)

The IRS is doing this in response to the COVID-19 pandemic. While this tax-payer friendly guidance is welcome, one might easily wonder if the IRS, in other circumstances, could be tempted to "taketh away." The IRS's action could arguably be interpreted as circumventing well-defined statutes prescribed by the Tax Code, Tax Court decisions, and its own long-standing guidance via Private Letter Rulings (PLRs).

In Summary - Good News!

That said, the important conclusion is that any distribution taken earlier this year (2020) that would have otherwise been a RMD can now be returned to an IRA or other retirement account, without any worry about the 60-day rollover rule (as long as it's done by August 31st), without concern about the once-per-year rollover rule, and without concern about being from a beneficiary.

PAYCHECK PROTECTION PROGRAM (PPP) UPDATE

One of the most discussed provisions of the CARES Act is the Paycheck Protection Program (PPP) Loan. We have covered this program several times on webinars and in newsletters. Some recent developments: Small-business owners who have not yet applied for forgivable loans designed to ease the economic pain of the Covid-19 pandemic now have another chance. Congress just passed legislation extending the deadline for submitting applications for the federal Paycheck Protection Program, and President Trump signed the bill on July 4.

Also, businesses that want to qualify for loan forgiveness now have 24 weeks, instead of eight weeks, to spend PPP funds. The portion of the loan that must be spent on payroll has been reduced to 60% from 75%. Companies will not be penalized if workers who have been offered their jobs back with the same hours and pay do not return.

If you've taken a distribution from an IRA that would have been considered an RMD in any other year but 2020, and you've changed your mind about needing the income, please contact us right away to discuss your options. We would be happy to assist you.