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## A Surprise from IRS about Inherited IRA Distributions

By Wagner Law Group      *Wed, Apr 21, 2021*

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*IRS Pub 590-B presents a conundrum. It appears to deprive owners of inherited IRAs (already deprived by SECURE Act of the 'stretch IRA') to take distributions annually, rather than distributing the IRA's contents within 10 years.*

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Just in the nick of time for filing 2020 federal income tax returns, the IRS issued a revised Publication 590-B (2020), "Distributions from Individual Retirement Accounts (IRAs)" ([Pub 590-B](#)).

In it, the IRS suggests that taxpayers who inherit IRAs and are not eligible designated beneficiaries must take a distribution for each of the 10 years following the IRA owner's death. This would eliminate the flexibility to determine the years in which the benefit is distributed, so long as the entire amount is distributed within the 10-year period.

While Pub 590-B applies solely to IRAs, the same interpretation would also apply to tax qualified plans such as 401(k)s, as well as 403(b) plans and other plans subject to the required minimum distribution (RMD) rules of the Internal Revenue Code.

### **The SECURE Act changed stretch IRAs**

The SECURE Act eliminated the "stretch IRA" for all beneficiaries who inherit an IRA, other than the IRA owner's surviving spouse and certain "eligible designated beneficiaries." The spouse and eligible designated beneficiaries are individuals who may "stretch" distributions over their remaining lifetimes.

An eligible designated beneficiary includes one who is disabled, chronically ill, or is not more than 10 years younger than the decedent. An eligible designated beneficiary who is a minor (an undefined term) may stretch distributions over the period of minority, then switch to a 10-year period. Other individual beneficiaries must complete distributions from the IRA within 10 years following the death of the original IRA owner (extended from five years under prior law). Other beneficiaries who are not individuals, such as estates or trusts, remain subject to a five-year rule.

Under prior interpretations of the five-year rule, the beneficiary need not take distributions each year of the applicable period but could wait until the entire period ended and distribute the IRA all at once. We would expect that the newer 10-year rule to be construed in the same way as the five-year rule. The seeming difference in treatment found in Pub 590-

B presents a conundrum.

### **Reinterpretation by IRS**

The IRS's apparent interpretation of the SECURE Act would require annual distributions over the 10-year period and is contrary to what many commentators, including The Wagner Law Group, believe to be the plain meaning of the SECURE Act. It also runs counter to the legislative history of the provision.

If the new interpretation is intended and the IRS wants distributions to be taken annually, this would be an unusual attempt to narrow a statute through a publication, without the benefit of a regulation or other formal guidance such as an announcement, notice, FAQs (frequently asked questions) or a revenue procedure.

Regulations, to be effective, require prior notice and the opportunity to present comments in writing and at a hearing. This is a time-consuming process but is generally expected if there is to be a change from the common understanding of the law. It is more likely, however, that the changes to Pub 590-B were made in error, during the haste of publication prior to the tax filing deadline, by an already over-burdened IRS staff.

### **So what should a taxpayer do?**

The SECURE Act changes became effective January 1, 2020, and therefore apply only to IRAs and other accounts whose owners died on or after the first of last year. Due to COVID-related relief, no RMDs were required for 2020 at all, so no corrections need be made for last year. The question is whether a distribution should be made in 2021 to those beneficiaries who are subject to the 10-year rule.

Cautious taxpayers could certainly plan to make 2021 distributions, including considering any additional cash resources that may be needed to pay any applicable income taxes. It is likely safe, however, to wait until year end for further guidance or a correction from the IRS. We believe that some response from the IRS will be forthcoming. In the end, this may prove to be a tempest in a teapot.

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