LAUER LAW, P.A.

ATTORNEYS AT LAW

3426 Ocean Drive, Vero Beach, Florida 32963

(772) 234-4200

Legal Legend

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"SECURE" ACT OF 2019

Congress recently enacted substantial revisions to the rules on Qualified Retirement Plans by way of the "Setting Every Community Up for Retirement Enhancement Act of 2019" (the "SECURE" Act). The SECURE Act addresses a wide range of issues, mainly focused on rules on retirement plans. This is a brief summary of only some of the important changes. Here are some of the changes that we believe are most important for our estate planning clients:

Changes to Rules Governing IRAs and Other Qualified Retirement Plans

The most significant changes under the SECURE Act are to the rules governing qualified retirement plans, such as IRAs and 401(k)s. While there were two primary changes to retirement plans, the effect of these changes will be significant.

The SECURE Act raises the age under which participants may contribute to a retirement plan and under which participants must take Required Minimum Distributions (RMDs) from 70 ½ to 72.

Additionally, the SECURE Act accelerates the rate at which beneficiaries of a retirement plan must withdraw funds after the death of a decedent. The new rules separate beneficiaries into three categories: Non-designated beneficiaries, designated beneficiaries, and eligible designated beneficiaries.

"Designated beneficiaries" are named beneficiaries that are not "eligible designated beneficiaries." Designated beneficiaries are subject to a new ten-year rule. In particular, all benefits must be distributed no later than December 31st of the year that contains the tenth anniversary of the participant's death.

"Eligible designated beneficiaries" are the surviving spouse; minor children of the decedent, (until they reach the age of majority or completes a specified course of education, then over ten years)(Note: grandchildren or other minor relatives may not stretch the retirement plan); someone who is chronically ill or disabled at the decedent's death (a beneficiary may not stretch the payout for the benefit if he or she becomes chronically ill or disabled after the decedent's death); and someone not more than ten years younger than the decedent. Eligible designated beneficiaries are subject to RMDs (required minimum distributions) and are allowed to withdraw funds over the beneficiary's lifetime.

Unnamed beneficiaries, who do not fit into either of the defined categories above are primarily estates,

charities, and non-qualifying trusts. These non-"designated beneficiaries" are subject to a five-year rule. In particular, all benefits must be distributed no later than December 31st of the year that contains the fifth anniversary of the participant's death.

If the benefits are held in trust for an eligible designated beneficiary, he or she does not receive the benefit of a "stretch" payment of an eligible designated beneficiary unless the trust is required to distribute any payment received from the retirement plan to the beneficiary of the trust. If the trust does not require distribution to the beneficiary, the withdraw must occur no later than December 31st of the year that contains the tenth anniversary of the participant's death, as if the beneficiary were a designated beneficiary rather than an eligible designated beneficiary.

Reducing the ability to stretch the payments from retirement plans may have significant tax implications. It could also result in large distributions that were not in line with your intentions. ***If your estate includes a retirement plan and you are unsure how the SECURE Act will affect your estate planning objectives, call our office for an estate plan review.***

Planning Opportunities with Retirement Plans as a result of the SECURE Act

Note that non-designated beneficiaries and designated beneficiaries are **not** subject to the RMD rules. For example, a 70-year-old child who inherits an IRA from a parent is not required to take any distributions until age 80, allowing for ten years of tax deferral.

Other Retirement Plan Changes under the SECURE Act

The SECURE Act increases the cap for automatic contributions to pension plans from 10% to 15% of employee compensation, beginning after 2019.

The SECURE Act provides a new tax credit for small employers to create an employer retirement plan and increases an existing tax credit for small employer pension plan to offset start-up costs.

Adoption of a stock bonus, pension, profit-sharing, or annuity plan after the close of a tax year but before a tax return for that year is due may be treated as having been adopted on the last day of the taxable year.

The penalty for failure to file retirement plan returns was increased substantially.

The rules for including annuities as part of a 401(k) Plan were relaxed.

529 Plans

The SECURE Act expands what expenses may be paid from a 529 Plan to include fees, books, supplies, and equipment required for an apprenticeship program and payments on any qualified education loan, not to exceed $10,000.

Birth or Adoption

There was also a change to allow individuals to make an early withdrawal from a retirement plan in the event of the birth of a child or an adoption.

"Kiddy Tax"

The SECURE Act changes the taxation of unearned income of children from being taxed at the rate of Trusts and Estates to the prior rule, taxing the unearned income at their parents' marginal tax rates.