TAX AND WEALTH ADVISOR ALERT: ESTATE PLANNING DURING THE COVID-19 CRISIS–ENSURING YOUR DOCUMENTS ARE LEGALLY ENFORCEABLE

The estate planning team at O'Neil Cannon is safely helping clients create estate plans, or update existing estate plans, during this COVID-19 crisis. Estate planning documents must comply with Wisconsin's strict signing requirements to be legally enforceable. For example, some documents require two witnesses or a notary to witness a testator's signature. To date, Wisconsin's strict signing requirements have not been relaxed during the COVID-19 crisis. Therefore, it is important to keep in mind Wisconsin's signing requirements during these uncertain times. This post will give an overview of each estate planning document and Wisconsin's signing requirements.

Requirements to Sign a Last Will and Testament or Codicil

A valid Will in Wisconsin must be signed by the testator in the "conscious presence" of two non-relative, disinterested witnesses. Alternatively, Wisconsin does permit the testator to direct someone else to sign his or her name on the Will, but this person must do so in the "conscious presence" of the testator and two non-relative, disinterested witnesses. Neither the courts nor legislature have addressed whether witnessing a Will over video conferencing (like Zoom or Skype) would satisfy the "conscious presence" requirement to create a valid Will. Notarization is not required unless the Will contains a self-proving affidavit or acknowledgment. Codicils to Last Will and Testaments are required to follow the same signing formalities as a Last Will and Testament.

Trust Signing Requirements

A Trust is a document that holds your assets on behalf of a beneficiary or beneficiaries and tells the trustee how to manage and distribute those assets. A Trust may be signed without a witness or a notary.

Certification of Trust Signing Requirements

A Certificate of Trust is a document that confirms the existence of a Trust. A trust certification must be signed or authenticated by any trustee of the Trust to be valid. A trust certification may be signed without a witness or a notary.

Marital Property Agreement Signing Requirements

A Marital Property Agreement is used to classify ownership of a married couple's assets and liabilities, as well as governs how each spouse's assets will be distributed upon his or her death. Wisconsin law simply requires both spouses to sign the Marital Property Agreement. Thus, a Marital Property Agreement may be signed without a witness or a notary.

Health Care Power of Attorney Signing Requirements

A Health Care Power of Attorney authorizes another person to communicate with your health care providers what medical treatments you do and do not want. A valid power of attorney for health care must be signed by two non-relative, disinterested witnesses, but it does not need to be notarized. It is unclear whether witnessing a power of attorney for health care over video conferencing (like Zoom or Skype) would satisfy the statutory requirements.

HIPAA Release Authorization Signing Requirements

A HIPAA Release and Authorization allows you to authorize other individuals to have access to your medical records. A HIPAA Release and Authorization may be signed without a witness or a notary.

Declaration to Physicians (Living Will) Signing Requirements

A Living Will allows you to state your preferences for life-sustaining procedures and feeding tubes in the event the person is in a terminal condition or persistent vegetative state. A Living Will requires you to sign in front of two non-relative, disinterested witnesses, but it does not need to be notarized. It is unclear whether witnessing a Living Will over video conferencing (like Zoom or Skype) would satisfy the statutory requirements.

Authorization for Final Disposition Signing Requirements

An Authorization for Final Disposition allows you to designate a friend or loved one to make funeral arrangements on your behalf. This document also allows you to state your preferences for final disposition and funeral service. This document can be signed in front of either (a) two non-relative witnesses or (b) a notary. It is unclear whether witnessing an Authorization for Final Disposition over video conferencing (like Zoom or Skype) would satisfy the statutory requirements, and online notaries have not been approved for estate planning documents.

Currently, our team is meeting our estate planning clients and prospective clients over teleconferences to ensure the safety of our community. After the initial consultation, clients are provided drafts of their estate plans for their review. When the estate planning documents are finalized and ready to sign, we are meeting our clients at their homes to witness and notarize their signatures through a glass door or window. Until Wisconsin authorizes electronic witnessing and notarization for estate planning documents, this process

ensures that estate plans are properly drafted and executed during these uncertain times.

If you would like to create an estate plan, or review your current estate plan, please contact Attorney Kelly M. Spott at 414-276-5000.

TAX AND WEALTH ADVISOR ALERT: WISCONSIN ISSUES SMALL BUSINESS SALES AND USE TAX EXTENSION

The Wisconsin Department of Revenue (DOR) has announced immediate help for small businesses on sales taxes in response to COVID-19. Small businesses can immediately request a one-month extension to file sales and use tax returns due March 31, 2020 until April 30, 2020 and due April 30, 2020 until June 1, 2020. The DOR will not assess late filing fees or penalties if sales and use tax returns are filed by April 30 or June 1. By law, payments are due March 31 and April 30 and 12% interest (lowered from 18%) will accrue beginning on the due date, unless the legislature changes the law to allow the DOR to waive interest. Extension requests should be sent to DORRegistration@wisconsin.gov.

TAX AND WEALTH ADVISOR ALERT: BUSINESS TAX PROVISIONS IN CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This article summarizes the tax relief provisions for businesses other than the payroll tax relief provisions that are contained in the Act.

Modifications to Net Operating Losses (NOLs)

The use of NOLs for businesses will be expanded with two amendments to Internal Revenue Code (IRC) Section 172(a). One amendment repeals the taxable income limitation for NOLs and the other modifies the rules relating to NOL carrybacks.

Taxable Income Limitation

Old Law: IRC Section 172(a) provides that the amount of the NOL deduction is equal to the

lesser of: (1) the aggregate of NOL carryovers to such year and NOL carrybacks to such year, or (2) 80% of taxable income computed without regard to the deduction allowable in this section. As a result, NOLs are currently subject to a taxable-income limitation and they cannot fully offset income.

New Law: The CARES Act temporarily removes the 80% taxable-income limitation to allow an NOL to fully offset income. This temporary provision applies to NOLs incurred in the 2018, 2019, or 2020 tax years.

Carrybacks

Old Law: Code Sec. 172(b)(1) provides that, except for farming losses and losses of property and casualty insurance companies, an NOL for any tax year is carried forward to each tax year following the tax year of the loss, but it cannot be carried back to any tax year preceding the tax year of the loss.

New Law: The CARES Act provides that NOLs from tax years after Dec. 31, 2018 and before Jan. 1, 2020 can be carried back to offset prior year income for 5 years.

Modification of Limitation on Losses for Taxpayers Other than Corporations

Old Law: In general, IRC Section 461 limits excess business losses on all noncorporate taxpayers—e.g., passthroughs and sole proprietors —to $250,000 ($500,000 married filing jointly). This limitation is effective for taxable years beginning after December 31, 2017and before January 1, 2026.

New Law: The CARES Act temporarily removes this loss limitation for noncorporate taxpayers so they can deduct excess business losses arising in 2018, 2019, and 2020. The CARES Act also allows the carryover of losses into subsequent taxable years.

Credit for Corporate Prior Year AMT Accelerated

Old Law: The Tax Cuts and Jobs Act of 2017 (TCJA) repealed the alternative minimum TAX (AMT) for corporations but provided that any corporation that paid AMT is eligible for an AMT credit under Section 53(b). The AMT credit can be applied against regular tax liability in later years, subject to certain reductions. Section 53(e) provides corporations with a refund for corporate AMT credits not used to reduce regular tax liability. For tax years beginning in 2018, 2019, and 2020, to the extent that AMT credit carryovers exceed regular tax liability, 50% of such excess AMT credit carryovers will be refundable.

New Law: With the CARES Act changes, corporations with AMT credits will be able to claim a refund for 100% of the credit in 2019.

Modifications of Limitations on Business Interest

Old Law: The TCJA modified IRC Section 163(j) to generally limit the amount of business interest allowed as a deduction to 30% of adjusted taxable income.

New Law: The CARES Act will allow taxpayers to deduct more interest expense by temporarily increasing the limitation on the deductibility of interest expenses from 30% to 50% for tax years 2019 and 2020. However, under a special rule for partnerships, the increase in the limitation will not apply to partners in partnerships for 2019 (it applies only in 2020).

Technical Correction for Bonus Depreciation for Qualified Improvement Property

Old Law: The TCJA amended IRC Section 168 to allow 100% additional first-year depreciation deductions ("100% Bonus Depreciation") for certain qualified property. However, in the final draft there was a technical error that made property called qualified improvement property ("QI Property") ineligible for 100% Bonus Depreciation.

New Law: The CARES Act provides a correction to this technical error under the TCJA, thereby making QI Property eligible for 100% Bonus Depreciation. This will allow taxpayers that make or have made improvements to their facilities to deduct those costs immediately rather than depreciating those costs over a period of 39 years. The correction is effective as of the enactment of TCJA, (i.e. for property placed in service after Dec. 31, 2017) so taxpayers can amend returns for costs that were previously depreciated.

Modifications of Limitations on Charitable Contributions

Old Law: Under IRC Section 170(b)(2)(A), a corporation's charitable deduction cannot exceed 10% of its taxable income. Any excess is carried over for a period of 5 years.

New Law: Starting with the 2020 tax year, the CARES Act will increase the taxable income limitation from 10% to 25% allowing corporations to deduct more of their charitable contributions.

O'Neil, Cannon, Hollman, DeJong and Laing remains open and ready to help you. For questions or further information relating to the CARES Act, please speak to your regular OCHDL contact or attorney Britany E. Morrison.

TAX AND WEALTH ADVISOR ALERT: IRC SECTION 139: HOW EMPLOYERS CAN MAKE TAX-FREE PAYMENTS TO EMPLOYEES FOR COVID-19 EXPENSES

In response to the ongoing pandemic, on March 13, 2020, President Trump declared the coronavirus or COVID-19, a national disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. This declaration put into play a little-known *existing* provision of the tax law –Section 139 of the Internal Revenue Code. Section 139 allows employers to assist employees during a federally declared disaster with "qualified disaster relief payments" that are tax-free to the employee and fully deductible to the employer.

Employers wishing to aid employees impacted by COVID-19 should consider taking advantage of the Section 139 disaster relief provision by familiarizing themselves with the Section 139 qualifications and adopting a Section 139 program to help their employees through these unprecedented times.

Background

Added to the Internal Revenue Code after the attacks on September 11, 2001, Section 139 allows employers to make tax-free "qualified disaster relief payments" to help employees in the wake of a qualified disaster. Section 139 is important because typically, under Section 102 of the Internal Revenue Code, any payment from an employer to an employee, even a "gift", is taxed to the employee as compensation. Section 139, however, provides that any amount received as a "qualified disaster relief payment" cannot be taxed to the employee as income. These payments are not subject to any federal withholding obligations and do not need to be reported on a Form W-2 or 1099. Significantly, any amounts paid as a "qualified disaster relief payment" are also deductible by the employer. In addition, in most cases, the exclusion will also apply for state income tax purposes.

A "qualified disaster relief payment" under Section 139 includes payments by an employer, not compensated for by insurance or otherwise, paid to or for the benefit for its employees to:

- reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster; and
- reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

COVID-19 "Reasonable and Necessary Expenses"

Section 139 has been utilized in the past for other Stafford Act disasters, and it was clear that during a natural disaster, like Hurricane Katrina, employer expenses paid to employees related to property repair and replacement, temporary housing, and food would be covered. However, the situation with COVID-19 is unique in that Section 139 has yet to be invoked for a disease pandemic. The IRS has not issued any guidance specific to COVID-19 and thus it is not entirely clear what types of expenses during this time will be considered "qualified disaster relief payments."

Nevertheless, legislative history and a reasonable interpretation of the statutory text provides that the following payments or reimbursements from employer to employee should qualify under Section 139 provided the expenses are reasonable and necessary, relate to the COVID-19 pandemic, and are not otherwise compensated by insurance:

- Medical expenses of the employee not covered by insurance or otherwise (i.e. copays incurred for COVID-19 treatment);
- Health-related expenses other than medical expenses (i.e. over-the-counter medications used to treat COVID-19);
- Dependent care expenses, such as child care or tutoring expenses for an employee's dependent due to school closures; remote learning or home schooling expenses, such as home internet, computer for use by a dependent, educational materials, subscriptions to online educational resources, etc.;
- Expenses associated with working from home, including home office set-up costs, computer, internet, printer, and cell phone costs, and even increased utility costs on account of the home office;
- Transportation expenses due to work relocation including costs associated with taking a taxi or ride-sharing app service from home due to mass public transport closures;
- Critical care and funeral expenses of an employee or a member of the employee's family, who dies from a COVID-19 infection; and
- Other living expenses due to an employee's know exposure to COVID-19 such as hand sanitizers and home disinfectant supplies.

"Qualified disaster relief payments" do not include nonessential, luxury, or decorative items or services. Additionally, Section 139 does NOT cover payments that are wage replacement payments such as sick pay, family medical leave pay, or any other type of salary or leave pay). As such, wage replacement payments will still be taxable wages and will remain subject to income and payroll tax withholding and reporting.

Section 139 does not impose limits on the amount of "qualified disaster relief payments" that employers can make to employees (either individually or in the aggregate). Moreover, Section 139 does not require that employees reach a certain period of employment in order to receive tax-free payments.

Employer Considerations

Section 139 does not require an employer to have a written policy or program for "qualified disaster relief payments", however, employers who wish to make "qualified disaster relief payments" due to COVID-19 should consider having one as a best practice. In addition, adopting a Section 139 written policy or program allows employees to be informed of the availability and parameters of such a program.

Any policy or program adopted by an employer in response to Section 139 should clearly document the features of the program, including the following:

- a description of who is an eligible employee;
- a listing of expenses that that will be subject to reimbursement or payment;
- a per-employee allowance for reasonable expenses (optional);
- the method for reimbursement/payment (i.e. whether an application is necessary); and
- the start and end date of the program.

Interestingly, Section 139 does not require employers to collect receipts or other proof of expenses incurred by employees. Nevertheless, employers should consider doing so to control costs and to avoid fraudulent claims from employees, even though implementing such aspect of the program may also lead to an increased administrative burden.

Conclusion

In this current environment, employers may wish to aid their employees affected by the COVID-19 pandemic. However, it is imperative that employers recognize that payments meant to aid employees during the COVID-19 pandemic could actually create an additional financial burden on their employees. Therefore, employers contemplating assisting their employees with payments during this time need to review the qualifications for Section 139 "qualified disaster relief payments" and consider adopting a Section 139 program. This little-known *existing* tax provision just might be the best way for employers to assist their employees during these uncertain times.

O'Neil, Cannon, Hollman, DeJong and Laing remains open during this time and is here to help. We encourage you to reach out with any questions, concerns, or legal issues you may have, including those related to COVID-19 or the drafting of a COVID-19 Section 139 expense plan.

TAX AND WEALTH ADVISOR ALERT: WISCONSIN

FOLLOWS IRS, STATE TAX FILING DEADLINE EXTENDED TO JULY 15

Wisconsin law already provides that any extension granted by the IRS for filing income taxes also extends the time allowed for filing Wisconsin income taxes. Nevertheless, Governor Tony Evers and Department of Revenue Secretary Peter Barca announced on Saturday March 21, 2020 that Wisconsin law will automatically extend time and waive interest and penalties for taxpayers due to the President's declaration of a national emergency. A summary of what this means for Wisconsin taxpayers is below.

- Tax filers do not have to file any extension forms to be eligible for this new due date.
- There is no limit on the amount of payment to be postponed, and there are no income exclusions.
- This applies to individuals, trusts, estates, partnerships, associations, companies, and corporations.
- This relief is solely for income tax payments, estimated income tax payments, and returns due April 15, 2020.
- There will be no interest or penalty for the period of April 15, 2020 to July 15, 2020.
- Interest, penalties, and underpayment interest for failure to make quarterly estimated tax payments with respect to such postponed federal income tax filings and payments will begin to accrue on July 16, 2020.

We will continue to communicate updates as we receive them. If you are interested in learning more about the new tax filing guidance, please contact attorney Britany E. Morrison at O'Neil Cannon

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TAX AND WEALTH ADVISOR ALERT: IRS MOVING TAX DAY TO JULY 15 FROM APRIL 15

U.S. Treasury Secretary Steven Mnuchin just announced that the IRS will be moving the tax filing date to July 15 from April 15. Mnuchin says people and businesses will have more time to file and make payments without interest or penalties. Mnuchin made the announcement on Twitter, saying the move came at the direction of President Donald Trump. Further federal guidance in addition to guidance from states is expected.

If you are interested in learning more about the new tax filing guidance, please contact

attorney Britany E. Morrison at O'Neil Cannon

TAX AND WEALTH ADVISOR ALERT: TAXPAYERS MUST FILE BY APRIL 15 BUT CAN DELAY PAYMENTS FOR 90 DAYS

The Treasury Department issued guidance March 18, 2020 saying that taxpayers can delay paying some federal income taxes for 90 days but still must submit their forms to the Internal Revenue Service — or officially request an extension — by April 15.

Individuals can delay payments of up to $1 million in taxes and corporations can get payments of up to $10 million deferred until July 15 without interest and penalties, according to a notice published Wednesday. The guidance also stated that this tax relief would apply to 2020 estimated income tax payments owed by certain taxpayers, such as those who are self-employed.

Taxpayers failing to file their federal returns or request an extension by April 15 could get hit with large penalties—but only if they owe tax. The penalty for failing to file a tax return is 5% of the unpaid tax that should be reported, charged monthly for up to five months. If a person files more than 60 days late, the minimum penalty is the lesser of $435 or 100% of the unpaid tax.

As for state conformity, some states have already issued guidance, while most states,

including Wisconsin, have not. Therefore, payments will be due April 15 to the state of Wisconsin unless taxpayers officially request an extension.

If you are interested in learning more about the new tax filing guidance, please contact attorney Britany E. Morrison at O'Neil Cannon

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TAX AND WEALTH ADVISOR ALERT: PARTNERSHIP AND LLC AUDITS ARE

COMING—IS YOUR PARTNERSHIP OR LLC PREPARED FOR THE NEW RULES?

With all the tax changes taking effect in recent years, entities taxed as partnerships may have overlooked an important change from a few years ago—the new partnership audit rules. The changes to the partnership audit rules were unrelated to the highly publicized Tax Cuts and Jobs Act of 2017, and instead were introduced in the Bipartisan Budget Act of 2015 (BBA), effective as of January 1, 2018. The BBA dramatically overhauled the former rules for partnership audits, repealing and replacing the Tax Equity and Fiscal Responsibility Act (TEFRA) partnership rules.

Although the new rules are very complex, the biggest changes are that (1) partnerships rather than partners will now be liable for any tax deficiencies resulting from an IRS audit unless the partnership elects out of the new rules, and (2) the new position of "Partnership Representative" gives that person much greater power to make binding decisions than the traditional "Tax Matters Partner." Accordingly, it is important for members and partners to familiarize themselves with some of these changes and ensure that protections and plans are built into the partnership or operating agreements.

New Rule Changes

Prior to 2018 under TEFRA, if the IRS wanted to conduct an audit on the activity of a partnership, it was required to audit and collect tax from its partners. Thus, the IRS could audit the partnership as long as the IRS assessed and collected any understatement of partnership tax, interest, and penalties at the *partner level*. The amount of tax due from the partner depended on the partner's other tax attributes (i.e., the partner's other items of income, gain, loss, deduction, and credit), and the IRS collected the resulting tax from each partner. Over time, the application of TEFRA caused huge headaches for the IRS due to the administrative burden of matching and tracking each partner, collecting from or refunding each partner, and navigating tiered partnership complexities.

To combat these issues, the IRS created a streamlined audit approach under the BBA, called the Centralized Partnership Audit Regime (CPAR). CPAR provides that the IRS can still audit the activity of the partnership, however, the IRS can now access and collect any resulting understatement of tax, interest, and penalties (which under the new rules is referred to as the "imputed underpayment") directly from the partnership, rather than from the partners.

While the IRS can audit (within the statute of limitations) the partnership's items of income, gain, loss, deduction, credit, and partners' distributive shares for any particular year of the partnership (the "reviewed year"), any imputed underpayment due from the partnership will be assessed in the year that the audit or any judicial review is completed (the "adjustment

year"). By collecting the tax payable in the adjustment year rather than the reviewed year, ownership changes may produce what some partners consider unfair results. For instance, a new partner in an existing partnership may find it unfair to bear the tax burden for adjustments to the prior year's tax returns.

Additionally, under the new audit regime, instead of a tax assessment calculation based on the other tax attributes of each partner, the imputed underpayment assessed against the partnership is calculated by multiplying the total netted partnership audit adjustment for the reviewed year against a single tax rate. The tax rate will be the higher of (1) the highest income tax rate in effect for individuals (currently 37%) and (2) the tax rate applicable to corporations (currently 21%). Depending on a partner's individual tax situation this is an undesirable outcome if the partner falls into a lower tax bracket. However, following the rules published in the regulations, the partnership may modify the underpayment amount if the partnership can show the IRS that a partner's share of an adjusted item is subject to a lower tax rate, or if the partnership can establish that a partner has agreed to an adjustment and paid the resulting tax through an amended return. These potential modifications must be timely submitted and approved by the IRS.

Electing Out of New Partnership Audit Rules

The IRS does allow a partnership to elect out of the new audit regime under certain circumstances. In order to elect out of the new audit rules, the partnership must meet two requirements: (1) the partnership must have 100 or fewer partners during the tax year, and (2) all partners must be "eligible partners" at all times during the tax year. Eligible partners include individuals, C corporations, S corporations, or estates of deceased partners. The list of eligible partners does not include partnerships, trusts, disregarded entities, nominees or other similar persons that hold an interest on behalf of another person, and estates that are not estates of a deceased partner. If there is even one ineligible partner, the partnership cannot elect out of the new audit regime. Further, if the partnership has an S corporation as a partner, the shareholders of the S corporation will count toward the 100-partner rule.

An election to opt out must be made annually on a timely filed tax return and the partnership must notify partners of the election within 30 days of making the election. The partnership must also disclose the names and taxpayer identification numbers of all partners on its tax return. The result of this election moves the adjustment and assessment of tax to the partner level.

"Push-Out" Election

The new rules also provide that a partnership can make a "push-out" election, which allows a partnership to shift or "push-out" any tax liability due upon audit to the partners that were actually partners during the reviewed year (which eliminates the partnership's responsibility

to pay the tax). Unlike the election to opt out of the new audit rules, this election is available to all partnerships; however, this election can be made only by the Partnership Representative (as detailed below).

This election must be made within 45 days after the IRS issues the final adjustment and the partnership must then furnish statements to the reviewed year partners within 60 days of the final adjustment showing the partner's share of the adjustment. Based on statements, each reviewed year partner will calculate the partner's tax for the reviewed year and any interim years after the reviewed year and preceding the adjustment year. The partners then pay the aggregate tax plus interest (an additional 2% interest is charged using this election) and penalties with their income tax return for the adjustment year (i.e., the current year's tax return).

Goodbye Tax Matters Partner, Hello Partnership Representative

Under the new regime, a Partnership Representative replaces the familiar Tax Matters Partner. With TEFRA, a Tax Matters Partner would simply act as a go-between with the partnership and the IRS. In contrast, with the CPAR changes, the Partnership Representative has full authority to act on behalf of the partnership and take any necessary actions that are binding on the partnership and all its partners. Additionally, the Partnership Representative is not bound by a fiduciary duty to act in the best interest of the partnership.

Another departure from the old rules is that the Partnership Representative is not required to be a partner, unlike the Tax Matters Partner. It can be anyone that the partnership feels is capable and knowledgeable enough to make decisions on IRS assessments. The partnership must designate a Partnership Representative on its tax return filing each year. It is important to note that the old Tax Matters Partner does not automatically become the new Partnership Representative and if no Partnership Representative is appointed, the IRS will appoint one. A partnership can remove its Partnership Representative, but only after a Notice of Administration Proceeding is issued by the IRS.

Considerations for Partnership and Operating Agreement Amendments

As a result of the new audit rules, entities taxed as partnerships should begin preparing for the effect of the new regime and consider addressing potential issues with their existing partnership or operating agreements. For example, if the partnership is eligible and plans to opt out of the rules altogether, the operating agreement should require the Partnership Representative to make the election annually. Partners may even want to prohibit any transfer of a partnership interest to an ineligible partner that could prevent an opt-out election.

If the partnership is unable to opt-out or chooses not to, the operating agreement should

specify how the partnership will pay an imputed underpayment and how the imputed underpayment will be allocated amongst the partners, old and new. The operating agreement should also stipulate whether or not the partnership will make a push-out election.

Moreover, at the very least, given the broad discretion a Partnership Representative is allowed under the new regime, a partnership should appoint or designate a process for appointing a Partnership Representative in its operating agreement. The operating agreement should also address when/if the Partnership Representative will be liable to the partners for failure to make an election or making an election that was not in the best interests of the partnership. A partnership may also consider amending or adding indemnification provisions for the Partnership Representative.

A partnership may also want to consider including language that requires the Partnership Representative to notify partners upon certain stages in an audit or require the Partnership Representative to consult with or obtain consent of the partners before taking a position, agreeing to a settlement, or making an election. All of the foregoing issues can and should be addressed in amendments to operating agreements, and there is still time to do so before the IRS begins audits in earnest under the new regime.

If you are interested in learning more about the new partnership audit rules, please contact attorney Britany E. Morrison at O'Neil Cannon

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TAX AND WEALTH ADVISOR ALERT: PRESIDENT TRUMP'S BUDGET PROPOSAL EXTENDS THE TCJA TAX CUTS

President Trump unveiled a budget proposal for the 2021 fiscal year. Of note, the income tax and estate tax cuts provided in the Tax Cut and Jobs Act of 2017 which are scheduled to expire on January 1, 2026, are being extended in this proposal to 2035. This includes the increased estate tax exemption of $11 million per person, plus annual cost of living increases. It remains to be seen how Congress will respond to this proposal.

TAX AND WEALTH ADVISOR ALERT: NOT FEELING SO SECURE PART II: HOW THE NEW SECURE ACT MAY AFFECT YOUR RETIREMENT AND YOUR TAX SITUATION

The “Setting Every Community Up for Retirement Enhancement” Act (the SECURE Act), signed into law by President Trump on December 20, 2019, pointedly changes many requirements for employer-provided retirement plans, IRAs, and other tax-favored savings accounts. While some of the provisions of the SECURE Act may provide taxpayers with great tax savings opportunities, not all of the changes are helpful, and there may be steps taxpayers can take to minimize its impact. Below is a summary of the key provisions of the SECURE Act that taxpayers should be aware of now, especially since many of the provisions go into effect in 2020.

Repeal of the maximum age for traditional IRA contributions

Before 2020, individuals were prohibited from making traditional IRA contributions upon reaching the age of 70 ½. However, starting in 2020, the SECURE Act allows an individual of any age to make contributions to a traditional IRA if the individual has compensation, such as earned income from wages or self-employment.

This SECURE Act provision eliminates the age limitation, which previously prevented taxpayers older than 72 ½ from contributing to their IRAs. This will allow individuals working into their later years to increase, or catch up with, their retirement savings goals.

Required minimum distribution age raised from 70½ to 72

Pre-2020 retirement plan participants and IRA owners were typically forced to begin taking required minimum distributions, or “RMDs,” from their plan when they reached age 70½. The age 70½ requirement was first established in the early 1960s and, until the SECURE Act, had not been adjusted to account for increases in life expectancy.

Under the SECURE Act, the age at which individuals must begin taking distributions from their retirement plan or IRA is increased from 70½ to 72. Notably, RMDs for individuals who turned 70½ in 2019 are not delayed, and instead, such individuals must continue to take their RMDs under the same rules prior to passage of the SECURE Act.

Increasing the age at which distributions are required allows additional time for the IRA to grow untouched. With many taxpayers remaining in the workforce longer, this provision might prove especially beneficial.

Partial elimination of stretch IRAs

If plan participants or IRA owners died before 2020, beneficiaries (both spousal and nonspousal) were generally allowed to draw from the account and pay taxes on their withdrawals over the beneficiary's life or life expectancy (in the IRA context, this is sometimes referred to as a 'stretch IRA').

However, under the SECURE Act, if a plan participant or IRA owner dies in 2020 or after, distributions to most ***nonspouse beneficiaries*** are generally required to be distributed within 10 years after the plan participant's or IRA owner's death. So, for those beneficiaries, the "stretching" strategy is no longer allowed.

Exceptions to the 10-year rule are allowed for distributions to beneficiaries who are (1) the surviving spouse of the plan participant or IRA owner; (2) a child of the plan participant or IRA owner who has not reached the age of majority; (3) a chronically ill individual; or (4) any other individual who is not more than 10 years younger than the plan participant or IRA owner. Beneficiaries who qualify under this exception may generally still take their distributions over their life expectancy (as allowed under the rules in effect for deaths occurring before 2020).

Overall, this change will cause much larger distributions during peak earning years, which will have a significant impact on the tax obligation of nonspouse beneficiaries. Many retirement and estate plans were created to benefit from the pre-SECURE Act "stretch" tax deferral, so the SECURE Act's elimination of the "stretch IRA" might change how you plan to pass on accumulated accounts, or could influence how you need to handle accounts that are passed down to you. For more discussion on this potential tax impact, see Tax and Wealth Advisor Alert: Not Feeling so SECURE: Proposed Law Could be Costly for Non-Spouse IRA Beneficiaries.

If you are interested in learning more about the SECURE Act and how it might affect your retirement and estate planning goals, please contact attorney Britany E. Morrison at O'Neil Cannon to discuss how we are able to assist you.