TAX TRENDS AND DEVELOPMENTS

Provisions of the 2019 SECURE Act Relevant to Family Law

By Joseph W. Cunningham, JD, CPA

The SECURE Act of 2019

General

The SECURE Act was signed into law on December 20, 2019. "SECURE" is an acronym for "Setting Every Community Up for Retirement Enhancement." Most of its provisions (1) expand opportunities for accumulating retirement benefits and (2) take effect January 1, 2020.

Penalty Free Withdrawals from 401(k)s and IRAs for Child Care Expenses

Under the SECURE Act, a parent expecting a child – including a newly adopted child – may withdraw up to $5,000 from a 401(k) account or an IRA to cover expenses associated with the child without incurring the 10% penalty tax on early withdrawals (generally, withdrawals before 59 1/2 years of age). For married couples, up to $10,000 can be withdrawn penalty-free.

Such withdrawals are still subject to regular federal and state income tax. And, of course, such withdrawals result in that much less growing tax-free for retirement.

But, for relatively young parents in a relatively low tax bracket, accessing funds to cover new child expenses can be quite beneficial.

And, for anyone adopting a child, the extra funds can offset some of the significant costs of adoption.

Use of 529 Plan Funds to Pay Student Loans

Internal Revenue Code Section 529 allows states to establish tax-advantaged savings programs that allow contributions to an account for a designated beneficiary's qualified higher education expenses (QHEE).

Michigan has established the Michigan Education Savings Program (MESP) – a Section 529 program.

Distributions from such accounts – including earnings - are not taxable provided such distributions do not exceed the beneficiary's QHEE.

QHEE include tuition, fees, books, supplies, and equipment – including technology equipment - required for attendance at a qualified institution of higher education (as defined in the 1998 Amendment to the Higher Education Act of 1965 – generally, any public college or university).

Distributions for QHEE are limited to $10,000 per beneficiary annually. If there is more than one Section 529 account for a beneficiary – e.g., one maintained by each set of grandparents - the $10,000 limit applies to distributions from all accounts on a combined basis.

The SECURE Act expands QHEE to include payments on student loans. This can be particularly beneficial if there is a balance in a 529 account when a student completes his/her education and has student loan debt – a not uncommon occurrence. The 529 funds can be used to pay the student loan. However, such payments are limited to $10,000 annually.

About the Author

__Joe Cunningham__ has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy, though his practice is statewide.

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