The Impact of the SECURE Act and CARES Act on Donors and Charities

Summary of Presentation to Santa Barbara Charitable Gift Planners Council

May 5, 2020

Presented by Shawn Jensen, Schwab Charitable, and Marianne Hayes, SPCIA

1. **Background**
    a. Two significant legislative initiatives were passed within months of each other.
    b. SECURE Act
        i. Signed into law on December 20, 2019.
        ii. Makes significant changes to retirement savings rules.
    c. CARES Act
        i. Signed into law on March 27, 2020.
        ii. Designed to pump money into the economy to keep payroll going and to protect employees and small businesses during the Coronavirus crisis.
            1. It also provides for rebates to individuals, made changes to the Required Minimum Distribution (RMD) rules for 2020 and changes to certain individual income tax laws for 2020.
    d. SECURE Act and CARES Act are new laws. As with any new law, it is subject to interpretations and corrections. In addition, over the next several months, we expect that the Treasury Department will be forthcoming with many regulations and the IRS will also provide much needed direction in these complicated areas.
2. **SECURE Act**
    a. The RMD age has increased to age 72, from 70 ½, for those who turned 70 ½ in 2020 or beyond.
    b. The age for QCDs remains 70 ½.
    c. An individual over age 70 ½ can contribute to a Traditional IRA if he or she has earned income.
        i. This could create a strange situation where an individual is taking RMDs from a Traditional IRA and making contributions to an IRA.
    d. The inherited retirement account rules have changed.
        i. The "Stretch IRA" is gone for many people.
        ii. It is replaced with a new, 10-year distribution rule on many inherited IRAs.
            1. There is no annual distribution requirement.
            2. Heirs will be able to distribute the asset any way they wish, during the 10 years.
            3. A 50% penalty applies to any remaining assets after 10 years.
3. **SECURE Act: Inherited Retirement Account Rules Have Changed – Planning Implications**
    a. Individuals with significant amounts in retirement accounts should meet with their estate attorney, CPA or financial advisor to discuss their post-SECURE Act options for their retirement accounts.
        i. These options may result in a revision of their estate plans.
    b. Consider a Roth IRA conversion
        i. The 10-year rule still applies to distributions to most heirs.
        ii. Heirs receive tax-free assets instead of retirement accounts subject to ordinary income tax.
    c. Consider leaving taxable brokerage accounts to heirs, rather than traditional retirement accounts.

        i. The assets in the taxable brokerage account will receive a step-up in basis at death.
    d. Consider using traditional retirement assets to pay living expenses in retirement, reducing the amount the heirs are required to distribute within 10 years.
    e. Use traditional retirement accounts to fund charitable gifts during life or at death.
        i. Consider if a Charitable Remainder Trust (CRT) would be an appropriate estate planning tool.
            1. A CRT may be the closest thing to a "Stretch" if distributions are under the 10-year rule.

4. The CARES Act

- a. RMDs are waived in 2020
    - i. This rule applies to IRAs, 403(b) plans, 457(b) plans and other employer plans.
    - ii. RMDs from Inherited IRAs are waived.
- b. But wait, I already took my 2020 RMD. What can I do?
    - i. If it has been less than 60-days since you took your RMD, consider a 60-day rollover to put the money back into the IRA.
        - 1. The IRS allows one rollover from an IRA to another (or to the same) IRA in any 12-month period.
            - a. This strategy will not work if the client has made an IRA rollover within the last 365 days.
    - ii. Based on IRS guidance, certain distributions have had the rollover window extended beyond 60-days.
        - 1. For non-Coronavirus related distributions taken in 2020 between:
            - a. February 1 and May 15: Rollover eligible until July 15.
            - b. May 15 and onward: Extension does not apply; subject to traditional 60-day window.
            - c. January 1 and January 31: Ineligible for rollover extension: 60-day window expired.
        - 2. Coronavirus related 2020 distributions are not eligible for rollover.
        - 3. A beneficiary of an IRA, such as an inherited IRA, may **no**t roll back a 2020 RMD already taken.
- c. Coronavirus Related Distributions from Retirement Accounts
    - i. An individual may take a distribution up to $100,000 from IRAs or employer plans in 2020. The reason for the distribution must be because:
        - 1. The individual has been diagnosed with Covid-19; or
        - 2. The individual has a spouse/dependent diagnosed with Covid-19; or
        - 3. The individual experienced adverse financial consequences as a result of being quarantined, furloughed, being laid off, or have work hours reduced because of the disease; or
        - 4. The individual was unable to work because they lack child care as a result of the disease; or
        - 5. They own a business that closed or operated under reduced hours because of the disease; or
        - 6. The individual meets some other reason that the IRS approves.
    - ii. Benefits of a Coronavirus Related Distribution
        - 1. Not subject to 10% penalty.
        - 2. Not subject to mandatory withholding.
        - 3. May be repaid to the account over 3 years.
        - 4. If the distribution is not repaid, it is taxable income and the income tax can be spread over 3 years.
- d. Changes to the laws regarding deduction of charitable contributions
    - i. Above the line charitable deduction

1. Individuals who do not itemize in 2020, and claim the standard deduction, may deduct up to $300 in charitable contributions in arriving at Adjusted Gross Income (AGI).
    a. The contribution must be a cash contribution.
    b. The contribution may not be made to a Donor-Advised Fund (DAF) or Private Foundation (PF).
    c. The gift must be made directly to a 501(c)(3) charity.

ii. Suspension of AGI limits on cash contributions
1. The AGI limit for cash contributions in 2020 has been suspended.
    a. Taxpayers may make charitable gifts up to 100% of AGI.
        i. The contribution must be a cash contribution.
        ii. The contribution may not be made to a DAF or PF.
        iii. The gift must be made directly to a 501(c)(3) charity.

5. Combining SECURE Act and CARES Act to Create Planning Opportunities for Individuals

a. You designed your estate plan to leave your children your retirement accounts, which were a significant part of your estate when you created your estate plan in 2018.
b. In 2020, the market value of your retirement accounts has significantly decreased, along with the stock market.
c. You have considered the implications of the SECURE Act and are rethinking your strategy of leaving retirement assets to your children, given the 10-year rule.
d. What about a Roth IRA conversion to take advantage of the decline in the market value of your retirement accounts?
    i. Your hesitation with doing a Roth IRA conversion is the amount of income taxes that will be due on the conversion of your retirement accounts to a Roth.
    ii. To offset some of the tax impact, consider making a significant gift to charity, taking advantage of the suspension of the AGI limitations in 2020.

6. Combining SECURE Act and CARES Act to Create Planning Opportunities for Charities

a. Take advantage of the suspension of the AGI limits in 2020 to encourage your donors to maximize their charitable gifts.
b. QCDs may be down in 2020 since there are no RMDs. How can you plan for double QCDs, up to the $100,000 limit, in 2021?
c. Gifting with appreciated securities may be down in 2020 due to the down stock market.
d. Given the low interest rate environment, does a Charitable Lead Trust fit into the donor's estate planning goals?

Additional Notes and Disclaimers

Schwab Private Client Investment Advisory, Inc. is a Registered Investment Advisor and an affiliate of Charles Schwab & Co., Inc.

Portfolio management provided by Schwab Private Client Investment Advisor, Inc., (SPCIA) a separate, but affiliated, Registered Investment Advisor of Charles Schwab & Co., Inc. (Schwab). SPCIA and Schwab are subsidiaries of the Charles Schwab Corporation.

Fee-based Financial Planning consultations are conducted by employees of Schwab Private Client Investment Advisory, Inc. (SPCIA). SPCIA is a Registered Investment Advisor and an affiliate of Schwab.

For informational purposes only. BNA Software and their employees are not affiliated with or an employee of Schwab or SPCIA

For informational purposes only. Leimberg Software and their employees are not affiliated with or an employee of Schwab or SPCIA