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The Connection

Aug. 2023 • Volume 17 • Number 1

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SECURE 2.0 Act provides new retirement-planning opportunities

One of the most significant provisions in the 2019 SECURE Act was raising the age that triggers required minimum distributions (RMDs) from 70½ to 72 for those individuals who had not reached age 70½ before Jan. 1, 2020. The SECURE 2.0 Act pushes this age even farther. Effective for distributions after Dec. 31, 2022, the trigger age for RMDs is now 73 for retirees who reach age 72 after Dec. 31, 2022, and reach age 73 before Jan. 1, 2033. In addition, SECURE 2.0 increases the RMD trigger age to 75 for those reaching age 74 after Dec. 31, 2032 (Code Sec. 401(a)(9)(C)(v)).

Penalty reduction for failure to timely take RMD. Another taxpayer-friendly provision of SECURE 2.0 reduces the excise tax penalty for failure to timely take an RMD for tax years beginning after the date of enactment (Dec. 29, 2022). The excise tax percentage is reduced from 50% of the amount that the RMD exceeded the actual amount distributed to 25%. A retiree can also further reduce the penalty to 10% by taking a corrective distribution within two years (Code Sec. 4974(a); Code Sec. 4974(e)).

Surviving spouses. Beginning in 2024, SECURE 2.0 provides that a surviving spouse who is the beneficiary of their deceased spouse's employer-provided

plan benefit may elect to be treated as an employee for purposes of future RMDs. If the spouse is the sole designated beneficiary of the deceased participant's account, RMDs will be determined under the uniform life table (Code Sec. 401(a)(9)(B)(iv)).

Roth accounts. Although owners of Roth IRAs are not required to take RMDs during their lifetime, this was not the case for Roth accounts held in employer plans, such as a 401(k). Accordingly, SECURE 2.0 eliminates pre-death RMDs from designated Roth accounts in a 401(k) plan for tax years beginning after 2023. However, retirees who turn age 73 in 2023 are still required to take an RMD from a designated Roth account by April 1, 2024 (Code Sec. 402A(d)(5)).

Other changes to withdrawal rules

Federally declared disaster area. For plan participants who live in a federally declared disaster area, SECURE 2.0 allows for penalty-free withdrawals of up to $22,000 taken within 180 days of the disaster. Although any such distributions would be includible in income, they could be recontributed within three years. Additional changes allow for recontribution of principal residence distributions, as well as an increase in the amount of a loan that can be taken from a plan by disaster victims ($100,000 or 100% of the victim's vested account). This provision is effective for distributions made with respect to disasters occurring on or after the date 30 days after the effective date of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of P.L. 160-260) (Jan. 26, 2021) (Code Sec. 72(t)(2)(11) (Code Sec. 72(t)(8)(F)).

Emergency savings account. For plan years beginning after 2023, plans may include an emergency savings account. Contributions would be limited to $2,500 and considered designated Roth contributions (Code Sec. 72(t)(2)(J); Code Sec. 72(d)(3); Code Secs. 402(A)(e)-(f)).

Long-term care insurance premiums. Effective for distributions made after Dec. 29, 2025, SECURE 2.0 allows up to $2,500 or 10% of a participant's vested account to be used for payment of long-term care insurance premiums. The amount will be subject to adjustment for inflation after 2024, and participants using the provision must provide the plan with a premium statement from the insurance provider (Code Sec. 72(t)(2)(N); Code Sec. 6050Z).

Public safety employees. Effective for distributions after Dec. 29, 2022, SECURE 2.0 includes an amendment to Code Sec. 72(t)(10) that expands an exception to the penalty on early withdrawals by public safety employees from a governmental plan to include 25 years of service as an alternative to age 50 (Code Sec. 72(t)(10)(A)).

Terminal illness. If a physician certifies that an individual has a terminal illness expected to result in death within 84 months, after Dec. 29, 2022, that individual can take distributions from their retirement account without being subject to the penalty on early withdrawals (Code Sec. 72(t)(2)(L)).

Catch-up contribution changes

A provision of SECURE 2.0 expands the impact of catch-up contributions beginning in 2025. Retirement plan participants who are at least 60 years of age and younger than 64 will be allowed to contribute the greater of $10,000 (subject to adjustment for inflation after 2025) or 150% of the basic catch-up amount. However, if the participant's income is $145,000 or more, all of their catch-up contributions will be treated as Roth contributions rather than pretax contributions (Code Secs. 414(v)(2)(B)(i)-(ii); Code Sec. 414(v)(2)(C); Code Sec. 414(v)(2)(E)). Indexing of the catch-up amount for IRAs after 2023 is also provided (Code Sec. 219(b)(5)(C)(iii)).

Charitable contribution benefits

SECURE 2.0 makes two significant changes to the rules governing qualified charitable distributions (QCDs). The first allows for a one-time QCD of as much as $50,000 to a charitable gift annuity (CGA), charitable remainder annuity trust (CRAT) or charitable remainder unitrust (CRUT) for the benefit of the donor or a spouse (Code Sec. 408(d)(8)(F)). Like the treatment of QCDs under prior law, the amount contributed to the QCD can qualify as part of the donor's RMD. The second change makes the $100,000 limit subject to adjustment for inflation (Code Sec. 408(v)(8)(G)). Both changes are effective for tax years beginning after Dec. 29, 2022.

Educational benefits

Enhanced education-related benefits include a new provision that allows the rollover of up to $35,000 from a 529 college savings plan to a Roth IRA during a person's lifetime. Although this provision would add a degree of flexibility to education planning, it does include additional requirements, such as: The annual amount available for rollover is limited (currently $6,500 for 2023, with an added $1,000 for those 50 or over); the account must have been open for 15 years or more; and contributions and earnings attributable to the last five years would be ineligible for rollover (Code Sec. 408A(c)(3)(E); Code Sec. 408A(c)(5)(B); Code Sec. 408A(e)(1); Code Sec. 529(c)(3)(E); Code Sec. 529(d)). This provision is effective for distributions after Dec. 31, 2023.

For plan years beginning after 2023, employees with student loan debt will see another benefit. Employers will be able to match an employee's student loan payments with contributions

to the employee's retirement plan (Code Sec. 401(m)(4)(A)(i)-(iii); Code Sec. 401(m)(4)(D); Code Sec. 401(m)(13)-(14); Code Sec. 403(b)(12)(A); Code Sec. 408(p)(2)(F)). Plan sponsors should consider the potential benefits to their participants, as well as any administrative changes needed to implement such a program.

Employer-related changes

SECURE 2.0 also brings new rules on auto-enrollment in defined contribution (DC) plans for plan years beginning after 2024. For new DC plans, the initial pretax contribution rate would be at least 3% but no more than 10%. This percentage would increase by 1% each year to a maximum of not less than 10% or more than 15%. Employees would be allowed to opt out of the plan (Code Sec. 414A).

Small business tax credit for plan start-up costs. The small business tax credit for costs related to the start-up of a retirement plan by employers with 50 or fewer employees is increased to 100% (up to $5,000 per year for three years). For plans other than defined benefit plans, an additional credit is allowed. The additional credit is maximized at $1,000 per employee with an applicable percentage of 100% in the first and second tax years but will drop to 75% in year 3, 50% in year 4, and 25% in year 5. These changes are effective for tax years beginning after 2022 (Code Sec. 45E(e)(2); Code Sec. 45E(e)(4); Code Sec. 45E(f)).

Starter 401(k) plan. Employers who currently do not have a 401(k) or 403(b) retirement plan will be able to offer a starter 401(k) plan in plan years beginning after 2023 (Code Sec. 401(k)(16)). Such plans would be required to automatically enroll participants at a rate of 3% to 15%, subject to the employee's choice to opt out. The annual contribution limit for such plans would be $6,000, with a $1,000 catch-up allowed.

Saver's credit. Beginning in 2027, the Saver's Credit for low-to-moderate income individuals will be a direct federal matching contribution rather than a refundable tax credit. There will be a 50% match of up to $2,000 that will phase out for incomes between $20,500 and $35,500 in the case of single filers and married filing separately, and between $41,000 and $71,000 for married filing jointly (Code Sec. 6433).

Part-time employees. The original SECURE Act required the expansion of 401(k) eligibility to employees who were at least 21 years old and had performed at least 500 hours of service for a minimum of three years. Effective for plan years beginning after 2024, SECURE 2.0 reduces the latter requirement to two years and extends the part-time rules to 403(b) plans (Code Sec. 401(k)(2)(D)(ii); Code Sec. 401(k)(15)(B)(i); Code Sec. 403(b)(12)(A); Code Sec. 403(b)(12)(D); Code Sec. 416(g)(4)(H)).

Involuntary cash-outs. Beginning in 2024, the involuntary cash-out amount for qualified plans will increase from $5,000 to $7,000 (SECURE 2.0, Section 304).

Financial incentives. Certain *de minimis* financial incentives, such as gift cards, can be given to employees for contributing to a 401(k) or 403(b) plan after Dec. 29, 2022 (Code Sec. 401(k)(4)(A); Code Sec. 403(b)(12)(A)). ■

Company couldn't be assessed partial liability after complete withdrawal

A federal district court properly enforced an arbitrator's finding that a media company could not be assessed partial withdrawal liability under the Multiemployer Pension Plan Amendments Act (MPPAA) following its complete withdrawal from a multiemployer pension plan, according to the U.S. Court of Appeals in San Francisco (*GCIU-Employer Retirement Fund v. MNG Enterprises, Inc.*, 51 F.4th 1092 (9th Cir. 2022)).

Affirming the district court's order in part, the appeals court said the arbitrator also properly found that the Pension Benefit Guaranty Corporation (PBGC)-published interest rate the plan's actuary used to calculate withdrawal liability was not the best estimate of the plan's experience. For the arbitrator's finding that the plan properly considered the contribution histories of two newspapers to which the company was a successor, the Ninth Circuit found that the district court should have considered the company's possible successor liability as of the asset sale dates in 2006 and 2007, not the later date of the company's complete withdrawal.

MediaNews Group (MNG)

The company, the named party in the appeal, includes two smaller controlled groups, MNG and California Newspaper Partnership Controlled Group. In 2013, California Newspaper

completely withdrew from the GCIU-Employer Retirement Fund, a multiemployer pension plan. MNG did the same in 2014, ending their contributions to the plan. In 2018, GCIU assessed against MNG a 2014 complete withdrawal and two subsequent partial withdrawals for 2014 and 2015. The 2014 partial withdrawal liability totaled $8,650,737, and the 2015 partial withdrawal liability was $4,229,840.

Earlier acquisitions and ceased contributions

In 2006, MNG acquired the assets of the *Torrance Daily Breeze*. In 2007, California Newspaper acquired the assets of the *Santa Cruz Sentinel*. Both newspapers previously participated in GCIU and stopped contributing before MNG acquired them. Nothing in the record suggested that GCIU assessed withdrawal liability against the *Daily Breeze* or the *Sentinel* when they withdrew.

Actuary's calculations

In calculating MNG's withdrawal liability, the plan actuary used the PBGC's published rate, which was around 4%. Generally, using the PBGC rate results in a higher amount of withdrawal liability because it assumes a lower rate of growth. The actuary also included the contribution histories of the *Daily Breeze* and the *Sentinel* in calculating liability.

Arbitration

MNG contested the 2014 and 2015 partial withdrawals, the use of the PBGC interest rate and the inclusion of the newspapers' contribution histories. The parties proceeded to arbitration, and the arbitrator first found that MNG could not be liable for the partial withdrawals that occurred after it completely withdrew from GCIU. Next, the arbitrator found that MNG had shown the actuary relied on unreasonable assumptions in deciding the interest rate for the withdrawal liability, because the PBGC rate disregarded the experience of the plan and the expected returns on assets. He instead directed GCIU to recalculate liability with a 7% interest rate. Finally, the arbitrator held that GCIU properly included the contribution histories of the newspapers acquired by MNG, because MNG was a successor that had notice of the liabilities.

District court

Both parties sought judicial review. The district court affirmed the award, except with respect to the interest rate. Instead of the arbitrator's 7% interest rate, the district court ordered an 8% interest rate because it believed the arbitrator made a typographical error.

Complete and partial withdrawal

On appeal, the Ninth Circuit Court first agreed with MNG's argument that a partial withdrawal under the MPPAA cannot occur after a complete withdrawal.

A complete withdrawal, the court observed, occurs when, under ERISA Sec. 4203, an employer "permanently ceases to have an obligation to contribute under the plan," or when the employer "permanently ceases all covered operations under the plan." Under ERISA Sec. 4205, a partial withdrawal occurs when there is "a 70% contribution decline" or "a partial cessation of the employer's contribution obligation."

The court first determined that a 70% contribution decline would always follow a complete withdrawal, rendering the distinction between complete and partial withdrawal meaningless. Second, there also cannot be a partial cessation of the employer's contribution obligation following a complete withdrawal because the statute defines a complete withdrawal as a permanent cessation of any obligation to contribute or of all covered operations under the plan. "One cannot partially cease something after completely ceasing it," the court said. GCIU thus could not assess MNG for two partial withdrawals following its complete withdrawal.

Interest rate assumption

Turning to the actuary's interest rate assumption, the Ninth Circuit agreed with the arbitrator and district court that the actuary's use of the PBGC rate did not satisfy the MPPAA's "best estimate" standard. The actuary testified that GCIU did not "take into consideration the future experience of the GCIU fund" or its "expected returns on the plan's funds as currently invested." The appeals court found that the "best estimate" language means that "the actuary must make assumptions based on the plan's particular characteristics when calculating withdrawal liability." By ignoring the expected returns of the plan's assets and experience, the actuary's estimate fell short of this statutory "best estimate" standard because it was not tailored to the features of the plan.

Successor liability

Finally, the arbitrator found that GCIU properly included the contribution histories of the newspapers acquired by MNG because it was a successor that had notice of the liabilities. The district court adopted this finding, concluding that MNG and California Newspaper were successors to the *Daily Breeze* and the *Sentinel*, respectively, and that both had notice of the potential liability.

Here, the Ninth Circuit found that the district court abused its discretion by not considering successor liability as of the 2006 and 2007 asset sales and whether it was fair to impose this liability as of 2018. The appeals court said the dates of those earlier asset sales, rather than 2014, when MNG completely withdrew, were the relevant times to determine whether MNG was a successor and whether the contribution histories should be equitably included. The district court should have also considered whether "fairness could militate against imposing successor liability." ■

IRS describes energy communities for purposes of bonus energy

IRS guidance previews likely regulations governing energy communities for the bonus credits that are part of several energy-related credits. The IRS expects the regulations will apply to tax years ending after April 4, 2023 (IR-2023-69; Notice 2023-29). Until the regulations are issued, taxpayers may rely on this guidance.

Credits that include energy communities

The Inflation Reduction Act of 2022 (P.L. 117-169) added energy community provisions to the following credits:

- The Code Sec. 45 production tax credit for electricity produced from certain resources
- The Code Sec. 45Y clean electricity production credit, a resource-neutral credit that largely replaces the Code Sec. 45 credit for property placed in service after 2024
- The Code Sec. 48 business energy investment credit for investments in property that produces electricity from certain resources
- The Code Sec. 48E clean energy investment credit, a resource-neutral credit that largely replaces the Code Sec. 48 credit for property placed in service after 2024

The rate for these credits may be increased for qualified facilities, energy projects or energy storage technologies placed in service in energy communities.

Energy community categories

There are three types of energy communities:

- Brownfield category – A site where development or reuse may be complicated by the presence of a hazardous substance, pollutant or contaminant, or certain mine-scarred land
- Statistical area category – Metropolitan statistical areas (MSAs) or non-MSAs with certain levels of employment or local tax revenues related to fossil fuels and with unemployment rates at or above the national average
- Coal closure category – A census tract (or directly adjoining tract) in which a coal mine closed after 1999 or a coal-fired electric generating plant was retired after 2009

The guidance provides a safe harbor for identifying brownfield sites and detailed definitions for the statistical area and coal closure categories.

For the statistical area category, Appendix A lists MSAs and non-MSAs, and Appendix B identifies MSAs and non-MSAs that satisfy the fossil fuel employment threshold. The IRS expects to update the list in Appendix B every year in May. Finally, Appendix C identifies census tracts that are in the coal closure category.

"The IRS expects to update the list in Appendix B every year in May."

Location in energy community

The production credits require a qualified facility to be in an energy community, and the investment credits require an energy project, qualified facility or energy storage technology to be placed in service in an energy community. For the production credits, this determination is made for each tax year during the 10-year credit period. For the investment credits, it is made on the date the property is placed in service.

However, for qualified property in a location that is an energy community as of the beginning-of-construction date, the location will be considered an energy community for the duration of the credit period. Property is located in an energy community if either:

- At least 50% of its nameplate capacity is in an energy community (the nameplate capacity test)
- At least 50% of its square footage is in an energy community (the footprint test) if it has no nameplate capacity ■

IRS updates on the clean vehicle credit

Since the enactment of the new clean vehicle credit in the Inflation Reduction Act, the IRS has issued notices and frequently asked questions to help taxpayers deal with the new credit provisions.

Eligible vehicles

A list of currently eligible vehicles can be found at the Department of Energy's Alternative Fuels Data Center website. These vehicles currently meet the North American assembly requirement and the manufacturer's suggested retail price (MSRP) requirement.

> "The final assembly requirement was the only new requirement effective in 2022."

Final assembly in North America

The final assembly requirement was the only new requirement effective in 2022. It applied to vehicles placed in service after Aug. 16, 2022, the date of enactment of the Inflation Reduction Act. A transition rule was available for a vehicle purchased or subject to a written purchase agreement on or before Aug. 16, 2022, but where the vehicle was not placed in service until after that date. In those cases, the vehicle can be treated as placed in service on Aug. 15, 2022, avoiding the new final assembly requirement. This transition rule does not appear to apply to vehicles placed in service in 2023, which are subject to the final assembly in North America requirement. For this purpose, North America includes the U.S., Puerto Rico, Canada and Mexico. Many foreign manufacturers of clean vehicles are looking to set up North American assembly operations to comply with this requirement.

MSRP

The MSRP for a vehicle is the base retail price suggested by the manufacturer plus the retail price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the vehicle at the time of delivery to the dealer. There are two limits on the MSRP, depending on the type and weight of the vehicle: $80,000 for vans, sport utility vehicles and pickup trucks and $55,000 for other vehicles. The list of vehicles on the Department of Energy website also includes whether each is subject to the $80,000 or $55,000 limit.

Taxpayer income

The new clean vehicle credit is only available to taxpayers with modified adjusted gross income at or below $300,000 for married filing jointly, $225,000 for head of household and $150,000 for single and married filing separately.

Placed in service

When a vehicle is placed in service generally controls what aspects of the new clean vehicle credit apply. The placed-in-service date is the date the taxpayer takes delivery of the vehicle. ■

Building a team of professionals to help provide solutions for our clients

At Edward Jones, we believe that when it comes to financial matters, the value of professional advice cannot be overestimated. In fact, in most situations we recommend that clients assemble a team of professionals to provide guidance regarding their financial affairs: an attorney, a tax professional and a financial advisor.

We want to work together as a team and offer value for your practice and clients. Using complementary skills and philosophies, we can help save time, money and resources while assisting mutual clients in planning for today's financial and tax challenges.

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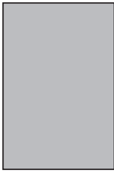

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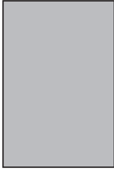

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Inside: The SECURE 2.0 Act and retirement planning

The Connection

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Edward Jones tax-management opportunities

Although Edward Jones cannot provide tax advice, our financial advisors can use a team approach with you to help investors understand the impact of capital gains and losses on their investments and offer opportunities to use tax management strategies before the end of 2023.

1. Financial advisors can **identify clients** who may have substantial realized gains and/or losses before the end of 2023 and get permission to share this information with you.
2. They can **identify current holdings** these investors own that may have substantial unrealized capital gains and/or losses.
3. They can work together with you to **share tax management opportunities** with these investors.

Learn More

Please contact one of our financial advisors today about helping mutual clients.

(See inside)

ITEM# 8459 CPA-15617-A EXP 29 FEB 2024