page 2
SECURE Act 2.0 could change retirement
Preparing for an estate planning meeting
page 3
Estate planning tips for unmarried couples
page 4
Collecting Social Security while working

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Step-up in basis at death might go away

In late March, a coalition of Senate Democrats introduced the Sensible Taxation and Equity Promotion (STEP) Act. The act would get rid of what's known as the step-up in basis to tax the unrealized gains of certain estates at death.

Step-up in basis refers to the way the value of an asset is readjusted for tax purposes upon inheritance. Under current rules, assets pass to heirs at the current market price, not the owner's original cost. That means no capital gains are realized, and no taxes are due.

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Under the STEP Act plan, up to $1 million in unrealized capital gains would be excluded from the tax. For example, let's say you expect to leave your children $5 million in stocks you purchased for $3 million. Under STEP, $1 million of the $2 million increase in value would be subject to capital gains.

The same rules would apply to gifts, with capital gains realized on the date of the gift. The law would also eliminate the use of trusts as a tool to avoid the tax.

Currently, estates valued above $11.2 million may be subject to a 40% estate tax upon inheritance. The STEP Act is written such that those estates are not subject to double taxation, because any tax paid under STEP would be deductible for estate tax purposes.

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In addition to the $1 million capital gains exemption, there would be an additional exclusion of up to $500,000 for personal residences. Assets in retirement accounts would continue to be exempt.

Critics say the bill would be a severe blow to family farms and other businesses that transfer to the next generation. But advocates argue that heirs who intend to continue operating those assets will have 15 years to pay the tax.

As drafted, the tax would be retroactive to January 1, 2021, if the measure is enacted. Talk to a lawyer to determine the possible impact on your estate plans.

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SECURE Act 2.0 could change retirement

The Setting Every Community Up for Retirement Enhancement (SECURE) Act, which passed in late 2019, was only the start of changes for the retirement industry. A bipartisan bill, which has been nicknamed "SECURE Act 2.0," is in the works.

The bill is designed to make it easier for workers to save for retirement, targeting both those just starting out and those nearing retirement. The bill also includes a provision that would benefit small business owners who offer retirement plans.

Here are some key provisions in the bill:

Higher limits on catch-up contributions

The bill would increase catch-up limits for individuals nearing retirement age. The new limit for 401(k) and 403(b) plans would be $10,000 (up from $6,500). For SIMPLE IRAs, the limit increases to $5,000 (up from $3,000).

Raising the age for RMDs

Currently, if you're at least age 72 you must take required minimum distributions (RMDs) from your retirement accounts or be subject to an excess accumulation penalty. Under the new bill, the starting age for RMDs would increase to 75, and the penalties would be reduced.

Relaxing RMD rules

Individuals with retirement account balances of less than $100,000 at age 75 would have RMD exemptions.

Increasing QCDs

The bill would increase the annual limit on qualified charitable distributions (QCDs) from $100,000 to $130,000. A QCD is a direct transfer of funds from your IRA to a qualified nonprofit. QCDs count toward RMDs, so if you don't need that money, you

continued on page 3

Preparing for an estate planning meeting

When setting up a will and other estate planning documents, many clients are concerned about making the most efficient use of their attorney's time. While these meetings are bound to raise some questions you hadn't thought of, there are things you can do to prepare.

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The more thought you put into certain goals and wishes (including those below), the easier it is for your attorney to create a set of documents that reflects your intentions.

Executor: Think about who would serve as your executor or personal representative charged with settling your estate.

Healthcare proxy: If you become incapacitated, who do you trust to make medical decisions for you?

Financial power of attorney: Similar to the healthcare proxy, this is the person who acts as your financial agent if you become incapacitated.

Guardian for your minor children: If you have children, or are planning for children, it's a good idea to name a guardian and a backup in case the first is unable or unwilling to serve.

Personal belongings: Consider whether there are certain items (e.g., heirlooms, cars, jewelry, or artwork) that you would like to be given to someone specific.

Distributions to young beneficiaries: Consider how beneficiaries will receive their share of your estate. If assets are passing to surviving children, do you want them to receive their share upon turning 18? Would you rather a trustee provides specified access to the funds until the child reaches a specified age?

Equalization: If you provided a substantial gift to a child in your lifetime (e.g., you helped them through college or paid for a wedding) that you have not yet provided to other children, do you want to provide an equalization mechanism as part of their inheritance distributions? If your adult children have very different financial situations, will that impact how you want your assets distributed?

Distributions to adult beneficiaries: Do you have adult heirs who might benefit from having their share better protected in case of divorce or creditor claims? Let your estate planning attorney know if any of your beneficiaries have special needs, have legal or credit problems, suffer from addiction, or seem likely to divorce in the future.

Charitable bequests: Do you wish to provide gifts to any nonprofits as part of your estate?

These are big questions and you may not have all the answers right away. But don't let that be a reason to put off scheduling an appointment. Your attorney can provide suggestions and help you think through all of your available options.

Estate planning tips for unmarried couples

If you are in a committed relationship but are not married to your partner, estate planning is essential. Unless you each draft a will and designate the other person as a beneficiary, your assets will pass to other family members and your partner will receive nothing when you die. Further, without proper planning you won't be able to make end-of-life decisions for each other.

In addition to a will, here are some tools available to unmarried partners:

Joint ownership: Under joint tenancy, ownership is shared equally with a right of survivorship. That means when one owner dies, the other automatically takes over the deceased person's share. Establishing joint ownership is usually as easy as putting both names on a document, such as a vehicle title or the deed to a house.

Beneficiary designations: Certain assets can be transferred via beneficiary designations, outside of your will. You can leave bank accounts, insurance, retirement accounts, and certain government securities to someone by naming that person as the "payable-on-death" beneficiary. These forms are available directly from the bank/account administrator and can be updated at any time.

Living will and power of attorney: If you want your partner to handle financial and medical decisions if you become incapacitated, a health care power of attorney and a living will can make sure that happens. Likewise, a financial power of attorney gives your partner control over your assets.

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Revocable trust: A living trust places your assets in trust for your benefit during your lifetime and designates where these assets will go when you die. A revocable trust is one you can change at any time. They can be set up to benefit unmarried partners, in the same way they can be set up for children or other heirs.

By placing assets in a trust, you can avoid the probate process, eliminating delays and fees. Your property can pass immediately and directly to the named beneficiaries. Some people also choose trusts to protect their privacy. While wills are public documents, a living trust is private and typically more difficult to challenge.

If you have questions about owning property as an unmarried couple, or ensuring your long-range intentions are protected, an estate planning attorney can help.

SECURE Act 2.0 could change retirement

continued from page 2

can avoid paying taxes on it by giving it to charity.

Student loan help

The bill would allow people with student loans to make payments on those loans in lieu of contributions to their workplace retirement plans and still receive their employer match. That helps people to pay down debt and save for retirement at the same time.

Adjusting the saver's credit

The saver's credit was designed to encourage low- and moderate-income workers to save for retirement. Depending on income, eligible taxpayers can currently receive a tax credit of 10% to 50% of their IRA and salary deferrals, capped at $1,000. The new bill simplifies the program with a flat rate of 50% credit and increases the cap to $1,500.

Mandatory automatic enrollment

Right now, employers can include an automatic enrollment feature on their retirement plans. This allows a portion of the employee's salary to be automatically withheld and contributed to their retirement savings. An employee who doesn't wish to participate can opt out.

Under the new bill, automatic enrollment would be mandatory for 401(k), 403(b), and SIMPLE IRA plans. Employers would be required to enroll eligible employees at a minimum of 3% to a max of 10% salary deferral. Studies show that plans with auto enrollment have higher participation rates.

Small business tax credits

The bill would offer small businesses with 100 employees or less a tax credit to offset up to $1,000 in employer retirement contributions per employee. The credit would phase out over five years.

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

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Collecting Social Security while working

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For people who want to work while collecting Social Security, the "retirement earnings test" (RET) rules can be confusing. Some people think they'll lose out on benefits if they continue to work, but that's not true.

Most importantly, RET rules only apply if you work and receive Social Security benefits before reaching full retirement age. Any income you earn after reaching full retirement age does not affect your benefit.

If you are under full retirement age, you'll see a $1 deduction in benefits for every $2 in gross wages or net self-employment income above the annual exempt amount ($18,960 in 2021).

That might seem like a big penalty, but you don't really lose those deductions. Instead, your Social Security benefits will be recalculated when you reach full retirement age to account for the previous withholding.

For example, if your deductions, added up, equal six months of lost benefits, Social Security will basically reset as if you filed six months later than you actually did. In the year you retire, a monthly limit (instead of annual) will apply. That limit is $1,580 per month in 2021 unless you are self-employed, in which case different calculations apply.

One critical note: If you are working, you need to notify the Social Security Administration (SSA) if your wages will exceed the annual exemption amount. If you don't, and you receive excess benefits, you could be fined, required to return the excess, or receive lower future payments.

Similarly, if you update your expected income and the SSA determines your earnings are on pace to exceed the annual exemption, you may see a temporary stoppage of benefits. For example, if your monthly benefit is $1,800, and the SSA determines your annual benefits will need to be reduced by $3,600, you could go two full months without payment before they resume.