

## **IJ LIVE February 2023: SECURE Act 2.0 and how it might impact you**

### **Introduction**

**Host:** Good afternoon, and welcome to today's IJ LIVE episode! My name is Rosalind Hanson, and I am your donor relations manager at the Institute for Justice.

We are thrilled to relaunch our LIVE series after an almost two-year hiatus. Previously these events were tele-townhalls but as we're all Zoom experts now, we're excited to add this video component into the mix. The IJ LIVE series is exclusively presented to our most dedicated Partners, Guardians and Four Pillars Society members with the hope to give a deeper look into what your generosity makes possible at IJ. Today we have the pleasure of hearing from IJ attorney and special counsel to planned giving, Rob Peccola.

**Rob:** Thank you! Glad to be here. Not just today, but I'm glad to be able to do what I do as an IJ attorney, and that would be impossible without the support of everyone on this call!

**Host:** We're honored to have someone of Rob's caliber on the IJ team to defend the constitutional rights of our clients. We don't often talk about this, but prior to joining IJ, Rob litigated a wide variety of probate and commercial matters. His background and expertise afford us the opportunity to share insights into the laws surrounding retirement and estate planning, such as SECURE Act 2.0.

Before we get into the subject of today's call, a few housekeeping tech tips. This webinar will be recorded and a link to it will be shared next week. If you would like to ask questions during the meeting you can type them in the Q&A box at the bottom of the screen. Please DO NOT use the chat function, as it will not be actively monitored. If we aren't able to answer your question today we will follow up after the call privately. So let's get started!

Rob, once again, we see new legislation impacting retirees, soon-to-be retirees and even a little for those not close to retiring. Where should we start?

### **I. Big Picture—The SECURE Act 2.0 Presents Excellent Giving Opportunities**

**Rob:** Let's start with giving from IRA accounts. This is an area that Congress can't seem to help tinkering with, and it's something a lot of our donors take advantage of. Taxpayers are forced to start withdrawing money from their IRA at age 72, known as Required Minimum Distributions ("RMD"). If you don't need this money to live, would like to avoid realizing the income, and

paying taxes, you can instruct your plan administrator to send the money directly to charity, this is known as a Qualified charitable distribution or QCD.

**Host:** IRAs are a wonderful charitable giving vehicle because during our working years, we happily watch our IRAs grow tax free and most Americans want to keep them tax free for as long as possible

**Rob:** That's right, but when it's time to retire, the government is eager to get its hands on that money by mandating that you take out payments known as Required Minimum Distributions ("RMD"). For many retirees, this is a familiar story. Earlier this month, IRA owners received notices from their IRA administrators of their 2023 RMD. This notice informs the account owner of the RMD calculation, the December 31 deadline to take the RMD, and the associated penalty for not taking all or part of the RMD within 2023. Consequently, IRA owners and those who are close to age 73, will be interested in learning of the benefits of ignoring income (one of the ironies of retired life is the overarching desire to reduce, not increase income through a qualified charitable distribution.

Starting at age 70½, before distributions are even required of you, you can make a qualified charitable distribution, which allows you to donate money (up to \$100,000) from a retirement account directly to a qualified charity like IJ. The charity isn't required to pay tax on the donation, so the full value goes to something you care about AND you meet the required minimum distribution, or more, and don't have to recognize it as income.

**Host:** QCD gifts can truly make someone's charitable giving work for their personal finances! Rob you hit upon the December 31st deadline, and I want to dive into that a little deeper with our viewers. For a gift to qualify as a QCD from an RMD for the intended calendar year, the funds must be received by your charitable institution of choice AND the funds need to have debited from your IRA by the end of that calendar year. Whenever possible we encourage donors to send their QCD gifts before the Thanksgiving holiday to ensure they meet the IRS's deadline.

**Rob:** Thanks for that reminder. One more important note on charitable giving through your IRA... YOU CAN GIVE MORE! The charitable limit is \$100K, so when you see your RMD figure from your administrator, remember it's a floor, not a ceiling!

## **II. IRA distribution changes**

**Host:** I can think of several donors this past holiday season who were delighted to give to IJ through their retirement accounts because not only were they reducing their income tax and keeping their money out of the government's hands but because their gift to IJ was also fighting government overreach!

But Rob, it seems like Congress just, the last time around, raised the “must draw by” date from age 71 ½ to 72 what has Congress changed this time with IRA gifts?

**Rob:** Now, they are at it again—the Securing a Strong Retirement Act of 2022 (SECURE 2.0), enacted in December of 2022, implements significant modifications to the required minimum distribution rules. Practically speaking, I think our donors will see things they like in the Act. The new legislation raises the age taxpayers generally have to start taking RMDs to 73 from 72, starting in 2023. That means if you turned 72 in 2022, you have until April 1, 2023, to take your first RMD, the one for 2022, and you’ll have to take another for 2023 by Dec. 31, 2023. If you turn 72 in 2023, your first RMD will be for 2024, the year you turn 73, due on April 1, 2025.

**Host:** Rob, those were a lot of ages and dates to process! For viewers questioning their specific RMD dates, ages and years, we encourage you to speak with your financial advisor to discuss your specific timeline for RMD withdraws if you still have questions. Because not taking your RMD can have pretty punitive ramifications. Rob, did SECURE Act 2.0 make any changes to RMD penalties?

**Rob:** GREAT Question! It also reduced the draconian penalty for failure to take required minimum distributions from 50 percent of the shortfall to 25 percent—still incredibly severe and something you should avoid at all costs!

Most importantly for charitable giving purposes, the new law allows a one-time transfer of up to \$50,000 (adjusted annually for inflation) to a charitable remainder annuity trust, a charitable remainder unitrust or an immediate charitable gift annuity.

### **III. A Wonderful Time for CGAs.**

**Host:** This sounds like a unique opportunity for folks who may have been thinking about a CGA. I know that CGAs have been a topic of past calls, can you remind us how they work?

**Rob:** As a refresher for folks, charitable gift annuities are a simple device that allows people to make a one-time payment to charity, that charity then makes payments to you for the rest of your life and keeps what is left at the end as an automatic planned gift. IJ offers charitable gift annuities in-house, which provide a way for people from a wide array of financial circumstances to give to IJ.

**Host:** Could you give us an example?

**Rob:** Of course! Based on the current IRS discount rate, a 75-year old opening a \$50,000 CGA with IJ in exchange would get a \$3,300 annuity for an annuitant, a federal income tax deduction

of roughly \$24,000. The annuitant gets consistent installments totaling \$3,300 for the rest of their life. Each payment would include a portion of tax free income, as well as income taxed as ordinary income and capital gains income. Installments can be set up in a variety of ways, but are most commonly monthly or quarterly payments to the annuitant.

That's an example of a "normal" CGA. There are some unique differences under the SECURE Act 2.0. As I mentioned earlier, the IRA-funded CGA is capped at \$50,000 for each individual, though spouses could each elect to create one. The installment payments from an IRA-funded CGA will all be taxed as ordinary income and there is no up-front tax deduction. It's also important to note that the annuitants can only be the donor or the donor's spouse.

While you don't get all the same benefits as a "normal" CGA, these IRA rollover CGAs can be a way to strategically reduce tax liability in the future, spreading out the taxable income you receive, as well as reducing your future RMD requirements. All while making a gift to any charity that you care about.

**Host:** But, as you said, these restrictions are unique just to the SECURE Act 2.0 provisions, regular CGAs are much more flexible.

**Rob:** Yes, regular CGAs are much more flexible. And we would be happy to talk through some of the differences with you privately if you are interested in hearing more.

**Host:** Can other retirement plans, such as 401(k) be used?

**Rob:** No. However, it may be possible to make a tax-free transfer from such other accounts, like 401Ks, to an IRA, from which a charitable rollover can then be made. One wonky little tidbit: If you wait until the year that RMDs will be owed, the conversion itself requires paying out the RMDs in that year and QCDs don't help. It's sneaky because you can't use IRA payouts to help with other RMDs like 401(k) or 403(b) and such. And a requirement to rollover 401(k), etc. to a rollover IRA is to FIRST payout the 401(k) RMD and then rollover the rest. No problem if you do it before RMDs are required, but it can trip you up if you wait until they are. So, convert the account ahead of time to prepare for QCDs!

**Host:** What are some other provisions in the SECURE ACT 2.0 that donors might be interested in hearing?

**Rob:** Yes, One big benefit being that the IRA QCD amount is now indexed for inflation in \$1,000 increments. This will allow taxpayers to make larger tax-free charitable gifts over time.

Additionally, 529 beneficiaries can now roll over any unused 529 funds, up to \$35,000, to a Roth IRA in their name if the 529 account has been open for 15 years.

Also, SECURE Act 2.0 modified a piece of the required minimum distribution rules for special needs trusts. The modification now allows charitable organizations to be named as a remainder beneficiary of the trust.

#### **IV. Q&A**

**Host:** Interesting, thank you Rob! And with that, we're going to turn to questions! Remember, if you have a question and you'd like to ask it live, you can type it into the Q&A box at the bottom of your screen. We do have a few questions that were submitted in advance, so we'll start with those now.

**Q:** Are there restrictions on the Charitable IRA QCD gift?

**A:** A QCD cannot be used to make gifts when the donor receives a benefit in return (i.e., to attend a dinner). Not an issue here at IJ where we eschew black-tie pretenses with our donors.

**Q:** How do I initiate a Charitable IRA QCD gift?

**A:** In most cases, you should start by contacting your IRA custodian. If you have an IRA with check-writing features, please be aware that your check must be made out to "Institute for Justice" and must clear your account by December 31 to count toward your RMD.

#### **V. Planned Giving Updates Quick Hits & Case Updates**

**Host:** Thank you. Rob. Moving from questions, we have a little time left today. In your role as Special Counsel for our Four Pillars Society, can you share what changes and trends have you noticed in estate planning?

**Rob:** The COVID-19 pandemic created an estate planning conundrum. On the one hand, the virus carried with it a sense of our mortality—reminding people that they need to have a valid will or otherwise make plans for their wishes to be carried out on their death. On the other hand, stay-at-home orders and social distancing recommendations made it difficult or impossible to comply with the traditional common-law rules requiring two witnesses in the physical presence of the testator.

**Host:** One of so many things upended by the pandemic.

**Rob:** Yes, and like so many things, the pandemic accelerated an existing trend—using electronic signature programs like DocuSign and AdobeSign for will execution. Why here we are on Zoom

with the instinctive familiarity of an old-fashioned telephone call. Even before the pandemic, Arizona, Nevada, Illinois, and Florida allowed electronic wills. When the stay at home orders started showing up, states like New York and Connecticut enacted temporary measures that authorized the remote witnessing of wills through audio-visual platforms like Zoom, FaceTime, or Skype. Now, we see measures like that becoming permanent.

**Host:** Making a will is not something people relish, but with the ability to take care of things online, it will hopefully take away one more obstacle.

**Rob:** Yes, although having an entirely electronic will feels new and somewhat surprising, other ways of transferring assets on your passing have already been done online for quite some time: naming joint owners with rights of survivorship, creating transfer-on-death accounts, and completing beneficiary designations using electronic forms. In short, when it comes to estate planning, the time is now!

**Host:** You mentioned easy beneficiary designations, it seems like that ties in with the IRA discussion we were just having.

**Rob:** Yes, naming a charity as the beneficiary of your IRA is a great way to give smarter. If, instead, family members inherits an IRA, this money has never been taxed and will be treated as income for the family member:

Between state and federal taxes, up to 40% of traditional IRA and 401(k) assets could go to the government by way of federal and state income taxes.

Not to mention, if the owner's estate is large enough the retirement asset could also be subject to a federal estate tax and a state estate tax.

So by designating a charity like IJ as a beneficiary, you will avoid up to four levels of taxation.

**Host:** As IJ's resident expert in estate planning, you often work with estate executors and legacy leaving donors for years at a time because planned giving, understandably, can be a long term and length process. This too is true of many IJ cases.

**Rob:** Exactly, it seems the government has this never ending purse of funds to defend their wrongdoings. It's only because of the generosity of our supporters and the resiliency of our clients that IJ is able to excel at defending the constitution.

**Host:** Talk with us a little more about that if you don't mind. For example – just yesterday a press release went out celebrating the final settlements of IJ's first ever class-action lawsuit, Philly Forfeiture. What types of resources, aside from the vast legal knowledge and strategies of IJ attorneys, went into defending this almost 10 yearlong case?

**Rob:** High level Philly, length of case, types of experts, kangaroo court, expense

**Host:** And IJ is now applying many pieces of what we learned in Philly Forfeiture in the Memphis Environmental Court case. Can you speak to that?

**Rob:** Often times clients become more empowered because they want to ensure what happened to them doesn't happen to anyone else. Take our Memphis Environmental Court case for example... explain case, impact to client, resources needed.

## **VI. Wrap-up**

**Host:** Rob, thank you so much for taking the time to share your insight with us today but I think this is about all the time we have for today. To our viewers, thank you for making the time to join IJ LIVE today. You'll receive a follow up email early next week including a recording of today's call, my contact information, and the opportunity to share your feedback should you feel so inclined. As we continue building out this series, we welcome your feedback and suggestions on topics for future events.

Last but certainly not least, thank you for your generous support of IJ. We hope you have a wonderful rest of your day!