TRUST ARTICLES

Country Club Trust Company

Ask a Trust Officer – RMD Rollovers

DEAR TRUST OFFICER:

I turned 70½ in 2019, so I had to take my first required minimum distribution in early 2020, before April 1. I did, but now I've heard that I didn't have to take that RMD after all? – Drawing Down Slowly

DEAR DRAWING:

You've heard correctly. The waiver of RMDs was included in the CARES Act, in response to crashing stock prices caused by the coronavirus pandemic. The amount of a required minimum distribution is fixed at the beginning of the year, based on account values and the age of the account holder. The amount does not change with the markets, which is not a problem if prices are going higher. But when prices fall dramatically, the rule can force the depletion of retirement savings at exactly the wrong time.

Those who received an RMD in 2020 are permitted to return that money to an IRA and avoid income taxation on it for another year. In June the IRS extended the deadline for taking that action to August 31, 2020. The transaction will be treated as an IRA rollover—except that it won't be counted as an IRA rollover for purposes of the "once in 12 months" rule. (Only one IRA rollover is permitted in any 12 month period. The older "once per tax year" rule that the IRS used was held by a court to be inconsistent with the plain language of the tax code.)

Before making a decision on whether to reverse your RMD, you should consult with tax and financial professionals.

Do you have a question concerning wealth management or trusts? Send your inquiry to Trust@countryclubtrust.com

Flexibility in Payroll Protection

The House passed the Paycheck Protection Program Flexibility Act of 2020 [H.R. 7010] by a 417-to-1 vote on May 28, and the Senate followed up by unanimous consent on June 3. Key flexibility added with the act:

- businesses have 24 weeks instead of eight to spend the loan proceeds;
- only 60% of the proceeds must be used for payroll;
- loan maturity expanded to five years for the portions of the loan not forgiven;
- qualified employers may defer payroll taxes even if they have received a PPP loan, a result explicitly forbidden in the CARES Act.

When the CARES Act was enacted, most observers expected the economic lockdowns to last for only two weeks, so the original eight-week bridge seemed enough. Unfortunately, as the lockdowns extended on, the federal government was demanding some small businesses spend money on payroll while their state governments were demanding they stay closed. That severely diminished the efficacy of the PPP loan program.

If a business has a PPP loan forgiven because the proceeds were used for payroll as Congress intended, are those payroll expenses still deductible? No, said the IRS in Notice 2020-32, that would be double dipping. "So what?" some senators have responded, as that was the result that they intended with the law because of the severity of the economic calamity. A bill to reverse the IRS notice, S. 3612 [the Small Business Expense Protection Act of 2020] has advanced in the Senate.

New Labor Dynamics

The report on jobs and unemployment in June blew past the predictions of experts. Some 4.8 million jobs were added in the month, and the unemployment rate fell to 11.1%. What's more, May had a better record than previously thought, as the May figures were adjusted upward. Of course, 11.1% unemployment remains a terrible problem to be solved, but the fact that there has been this much progress is very good news indeed.

One major contributing factor to employment being as strong as it is has been the move toward working from home. Stanford economist Nicholas Bloom has conducted a nationwide survey of employment practices, and has published his findings at the Stanford Institute for Policy Research. Key observations:

- 42% of U.S. workers are working full time from home. They account for about two-thirds of economic activity.
- Only 26% of those in the survey are working on their employer's premises. These are primarily essential service workers.
- Speed of internet in the home is an important variable. Some 35% of respondents have such slow internet connections that they are not able to participate in workable video calls.

Bloom expects working full time from home to continue as the norm after the coronavirus pandemic subsides, even if a vaccine is developed. Employees appreciate the absence of commuting, employers are rethinking how much office space they really need. At the same time, employers are reducing density in the office environment to promote social distancing.

These changes in work habits suggest that the growth of city centers will stall, which would have follow-on effects on restaurants and entertainment in downtowns. In an interview about the survey, Bloom concluded, "If I were a company right now planning the future of my office, I would be looking to the suburbs."

Reduce Estate Taxes to Zero

With the temporarily doubled exemption from the federal estate tax ($11.58 million per person in 2020), not many families need to worry about this aspect of estate settlement. For those who still have that concern, or who expect to live until 2026 when the exemption is scheduled to fall roughly in half, a recent private letter ruling shows an IRS-approved method to bring that tax down to zero.

A taxpayer's estate plan includes a marital deduction trust should his spouse survive him. At the spouse's death, the trust becomes a charitable lead annuity trust (CLAT). This kind of trust pays income to a charity for a set period, after which the assets pass to private beneficiaries without additional tax. The annuity in this case will be 5% of the initial value of the trust. The term of the trust will determined by a formula, rather than set as a fixed number. The trust will last the number of years required to create a charitable deduction large enough to bring federal estate tax obligations down to zero.

Should the spouse die first, the CLAT will be created by Taxpayer's estate, with the same formula—a 5% annuity for the number of years needed to zero out the federal estate tax then due. (Separate trusts were created to use of the value of the unified transfer tax credit.)

In private advice (Private Letter Ruling 201933007) the IRS held that the formula will provide numbers that are determinable as of the date of creation of the CLAT, and therefore the charitable deduction will be allowed.

Interestingly, by using a formula instead of a set number of years, this plan will bring the estate tax down to zero regardless of what

Congress does about the estate tax in the future. Should the amount exempt from estate tax drop on schedule, the income going to the charity will last longer, long enough to offset that change. If this element of the estate plan is not earlier amended, there will be no estate tax due for either Taxpayer or spouse, regardless of the order of death.