PAUL HOOD ANSWERS YOUR QUESTIONS

JUNE 2021

Greetings – and thank you very much for sending me your estate planning and tax law questions!

I've selected a few important ones to tackle in this issue.

With the new age of 72 for withdrawals of the required minimum distribution (RMD) from respective 403b/401K plans, if one is still employed, can they legally delay any RMD until they retire?

The answer to this question depends upon whether you own 5% or less of your employer. If you own 5% or less of your employer, you can delay beginning to take the RMD from a qualified plan until you actually retire, even if you keep working past age 72. However, if you own more than 5% of your employer, then you're subject to the general rule that you must begin taking RMD on attaining age 72. **It's important to note that this exception does not apply to IRAs.**

Can a retired person invest in a ROTH IRA? Or add to one that already exists?

The answer to your question is yes. Roth IRAs have no age limit for contributing. However, as a practical matter, very few truly retired people can contribute to a Roth IRA because you must have ***earned income***. Roth IRAs really were designed to help people save for retirement with the advantage of tax-free growth ***before*** you retire. For purposes of the annual limit, "compensation" only includes wages from employment or earned income from self-employment.

You must have compensation equal to or greater than your contribution to a Roth IRA. Also, your eligibility to contribute to a Roth IRA can be subject to phase out, based on modified adjusted gross income (MAGI) ranges that are published annually and correspond to your federal tax filing status.

Are there any new (approved by Congress) tax laws that donors would like to be made aware of in 2021?

As of the present time, the answer to your question is no. The Congress has not enacted any significant tax legislation yet. However, there are a few members of Congress who have introduced several bills that would make significant tax law changes, and that would adversely affect many taxpayers, both on the income tax and transfer (estate and gift) tax sides.

From what I have heard, the new White House budget may be asking for a retroactive increase in the capital gains tax for people who make at least $1,000,000 from 23.8% to 43.4%.

On the transfer tax side, the "*For the 99.5 Percent Act*," which has been introduced by Senator Bernie Sanders annually since 2010, would raise transfer tax rates and lower transfer tax applicable exclusion amounts. The "*For the 99.5 Percent Act*" would raise rates from the flat 40% at present to as high as 65%.

The "*For the 99.5 Percent Act*" also would reinstitute the concept of graduated rates for the transfer tax, which we really haven't had for several years. Furthermore, it would significantly ***lower*** the applicable exclusion amount that each person can transfer for federal estate and gift tax purposes and again make a difference between the applicable exclusion amount for federal gift tax purposes and the applicable exclusion amount for federal estate tax purposes.

Under current law, the applicable exclusion amount for federal gift tax and federal estate tax is the same number and would eliminate the indexing of the applicable exclusion amount that has been part of the law since 2001.

In addition to the *"For the 99.5 Percent Act,"* with respect to the transfer taxes, there are two bills presently pending, one in the House and the other in the Senate, that also would make a fundamental income tax law change. The principal difference between these two bills is that one of them would have retroactive effect to a date that precedes the date of enactment, while the other one would only apply prospectively from the effective date under the bill.

However, unlike the *"For the 99.5 Percent Act,"* these income tax bills would adversely impact ***all*** Americans. Under current law, people who inherit property get a new income tax basis in the inherited property equal to the fair market value of the property at the decedent's death without having to pay a capital gains tax.

The proposed income tax bills would amend the Internal Revenue Code of 1986 to treat property transferred by gift or at death as sold for fair market value at death, which would trigger an automatic capital gains tax at death. There's also discussion about eliminating the new income tax basis at death rule altogether, which would dramatically impact ***all*** Americans.

What is the one item that a newly retired person needs to keep in the forefront of planning their retirement?

Wow. What a question, but the ***misplaced*** order of the question actually is more interesting to discuss. One should think about retirement ***before actually retiring***. The best thing that someone can do is to carefully plan ***before actually retiring from work***.

Premature retirement or retiring without fully thinking it through first is not either an ideal situation or one with which you would want to deal. In my opinion, the number one problem that I see with respect to retirement is that the retiree or prospective retiree fails to consider the practical or psychological effects of ceasing to work on the marketability of your work skills if retirement was made prematurely.

Obviously, this situation is significantly dependent upon two unrelated issues: (1) the nature of the person's occupation; and (2) the circumstances surrounding the stoppage of work, e.g., whether the person voluntarily retired or was forced involuntarily into retirement.

The nature of one's employment or occupation can significantly inform how one addresses ***actual*** retirement. Many occupations require a participant to stay current with the latest or best practices in performing the duties of the occupation. If one prematurely retires and ceases keeping up with the knowledge required to perform the duties of the occupation, one's skills and knowledge base may quickly become dated or stale. This is a mistake that could preclude easy reentry into the person's occupation.

This can create a problem for the prematurely retired person, who now is effectively precluded from going back to work in their historical profession or occupation, making the retirement decision even more important because reentry into the work force in a different occupation probably means that the person isn't going to be making as much income as they when they retired because they're essentially entering into a new profession and restarting at the bottom.

The second factor to consider is the circumstances surrounding the person's retirement, e.g., whether it was voluntary or involuntary. The amount of advance notice that an involuntarily retired person gets before being retired also can be important.

The ***bottom line*** is that you need to carefully and deliberately think about the effect of retirement on your ability to get back into the work force if retirement winds up being premature. My advice is that if you do retire, you should continue to maintain your continuing education for at least two to three years ***after*** retiring just to be sure.

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