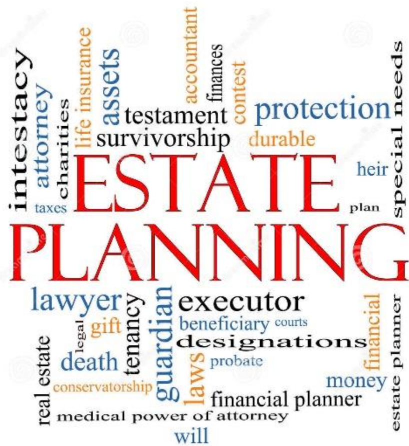

ESTATE PLANNING WITH PAUL HOOD

FEBRUARY 2021: *ASK PAUL*

We received some very good questions about taxes, retirement plans and IRAs for this month's column. If you ever have a question that you'd like to see me address or answer in a future column, just reach out to Eileen Kerner, Director of Congregational Advancement with the Sisters.

Our readers asked:

I am interested in sharing some of my IRA/401(k)/403(b) with the Sisters. Can you focus on the process of doing so? Do I need to cash out IRA/401(k)/403(b) and then have to count the distribution as taxable income first? First and foremost, I applaud you on your forward-thinking about benefitting our tremendous Sisters of St. Francis of Sylvania OH.

The answer to your question is not always. If you're age 70½ and have a traditional IRA, you can do a qualified charitable distribution (QCD, also referred to as an IRA charitable rollover) to the Sisters without having to take the distribution into income first. Moreover, while you won't get an income tax charitable contribution deduction for a QCD, it will count toward your RMD without having to recognize income.

The way that the QCD is supposed to work is that the money is paid **directly** out of the IRA to the qualified public charity like our Sisters. However, some IRA account custodians give their account holders IRA checkbooks. Just make sure that you don't first write the check to yourself; make it out directly to the Sisters.

There's a **lot of misinformation** out there in the financial public about how to best go about getting money out of an IRA or qualified plan to charity. I implore you to reach out to Eileen Kerner with the Sisters **before you take any action**. She could save you making a big and costly mistake by first taking a distribution that you're intending to give to the Sisters.

Now, for some who desire to make provisions for charity out of retirement plans and IRAs, it will be necessary to first recognize the income and then get an income tax charitable contribution deduction for that contributed to charity. You must run the numbers first, because it may be that the income tax charitable contribution deduction won't be a complete wash against the recognized income.

What is the age of being forced to begin taking required minimum distributions from retirement plans and IRAs (RMD) for those over 70. Is it 72 going forward and due the year they turn 72 and paid out by the next April? Was there a reprieve on 2020 taxes? The SECURE Act changed the deadline for having to begin taking RMDs from April 1 of the year following the year in which the participant or account holder attained the age of 70 ½ to age 72. Accordingly, the

RMDs must begin by April 1 of the year following the year that the participant or account holder turns age 72. While there wasn't any reprieve on 2020 taxes on retirement plans and IRAs, 2020 legislation dispensed with the requirement to take out an RMD **in 2020 only**.

I know that the SECURE Act eliminated the ability of many beneficiaries to obtain a lifetime "stretch" of IRA and qualified plan benefits of lifetime stretch. As I understand it, the lifetime stretch is now restricted to spouse beneficiaries and young or disabled beneficiaries. Are there any ways around the new rules? Generally, the new SECURE Act rules make it very difficult to obtain a lifetime stretch for beneficiaries who aren't surviving spouses or young or disabled beneficiaries. However, some experts have demonstrated that the interposition of a tax-exempt charitable remainder trust for a term of up to 20 years can achieve some semblance of stretch, albeit not as favorable as under pre-SECURE Act law. However, charitable remainder trusts are complex creatures, and this is a very highly specialized area of estate planning about which very few estate planners are well versed, so caution is in order. I don't know how many people will be practically able to avail themselves of this planning technique. I suspect that many won't find it palatable. Perhaps in a subsequent column I could explore this further with examples.

What are the pro's and con's of a trust to manage an IRA /401(k)/403(b)? Is this something that you would ever recommend? Trusts are management and asset protection vehicles. They often have little role in planning for retirement plans and IRAs. However, if the account is large enough so that you don't want the ultimate beneficiaries to withdraw all of the money in the first year (which happens about 80% of the time), a trust can come in very handy by interposing a governor in the form of a trustee. This often is done with blended family couples where the account holder wants to provide for both his spouse and his children from a prior relationship.

As I said earlier, and it bears repeating: the use of trusts in retirement planning is very complex and requires expertise that few regular estate planners possess, so caution is in order. When in doubt, and you should be in doubt, always ask before taking action. Eileen Kerner is always happy to hear from you, and I encourage you to enlist her aid as a resource to prevent problems.

May God continue to bless you, your families and the Sisters of St. Francis of Sylvania OH.

Consultant Paul Hood, FCEP, works with Thompson & Associates in Toledo, OH to assist charitable organizations and work with their donors on values-based estate planning. Paul obtained his undergraduate and law degrees from Louisiana State University and an LL.M. in taxation from Georgetown University Law Center before settling down to practice tax and estate planning law in the New Orleans area. Paul has taught at the University of New Orleans, Northeastern University, The University of Toledo College of Law and Ohio Northern University Pettit College of Law. Paul has authored or co-authored seven books and over 500 professional articles on estate and tax planning and business valuation.