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CHOATE'S NOTES: August 2023

Tired of the 60-day rollover? How would you like a three-year rollover option? You do NOT want to qualify for it, but some people do (thanks to the pandemic), and more people will (thanks to SECURE 2.0) ...

The three-year rollover crept into the Internal Revenue Code via Congress's desire to help out people who are in trouble one way or another... and who have a retirement account.

Generally, the Tax Code wants to STRICTLY keep money inside those tax-favored accounts until the owner reaches retirement age: Qualified plans are not supposed to distribute retirement funds prior to retirement age or termination of employment; and anyone who gets money out of such plans (or an IRA) prior to age 59½ must pay not only income tax but an extra 10% penalty under § 72(t).

But after hearing many sad stories Congress started putting in loopholes, by (among other things) adding more and more exceptions to the 10% penalty [we're up to 25 by my count]—including in cases of nationally-known disasters on a case-by-case basis.

Then came the COVID-19 epidemic and Congress naturally responded by voting to spend tons of money—and adding a new type of penalty-free distribution (in 2020 only) from all retirement accounts, the "coronavirus related distribution" (CRD).

It's not in the Internal Revenue Code of course but can easily be found in section 2202 of P.L. 116-136 (the "CARES Act of 2020"). If the distribution met the definition of CRD (max $100,000) it gets three tax breaks: Income from the distribution was spread over three taxable years (taxpayer could opt out), there was no 10% penalty (normally applicable if under 59½), and all or part of the distribution can be paid back into a retirement account within three years...and the payback into a traditional IRA or plan account will be treated as a tax-free rollover! (Taxpayer will need to amend returns that reported the distribution as income.)

Any client who took a nonrequired distribution in the last few months of 2020 and now would like to pay it back into a plan (and get a tax refund) may be able to do so—check it out.

Having discovered this creative new way to benefit suffering retirement account owners, Congress couldn't resist expanding its use. Since 2020 Congress has added *five more* ways to get money out of a retirement plan while having three years to change your mind (or improve your finances) and roll it back in to a retirement account.

One of these also gets the three-year income tax spread and all are exempt from the 10% penalty. However, these are not tax shelters—four of them (domestic abuse, federally declared disaster, emergency personal expenses, terminal illness) involve serious personal problems and the fifth (qualified birth or adoption expense) obviously involves a significant personal commitment.

The point is for planners to be aware that these tax-favored options are out there for clients who may be facing a bad problem—and, though all make their primary appearance as exceptions to the 10% penalty, **they are actually available for clients of all ages who face these particular problems.** For my free chart listing all 25+ exceptions to the 10% penalty, including which qualify for the three-year "rollover," click here.

I will cover this subject and everything else I know about estate and income tax/RMD planning and compliance for retirement accounts in two 3-hour webinars for Indiana Continuing Legal Education Forum, September 8^{th} and 14^{th} 2023.

For info or to register, visit:

Session 1 of 2
Indiana Continuing Legal Education Forum, September $8^{th,}$ 2023

and

Session 2 of 2
Indiana Continuing Legal Education Forum, September $14^{th,}$ 2023

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For more upcoming webinars, and seminars, visit:

Natalie Choate’s Seminar Schedule at Ataxplan Publications

See you in the fall,

Natalie Choate

“...thank you for all your books and lectures.
You make a crazy legal topic almost sane!”

—Susan, CPA

Wellesley, Massachusetts

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