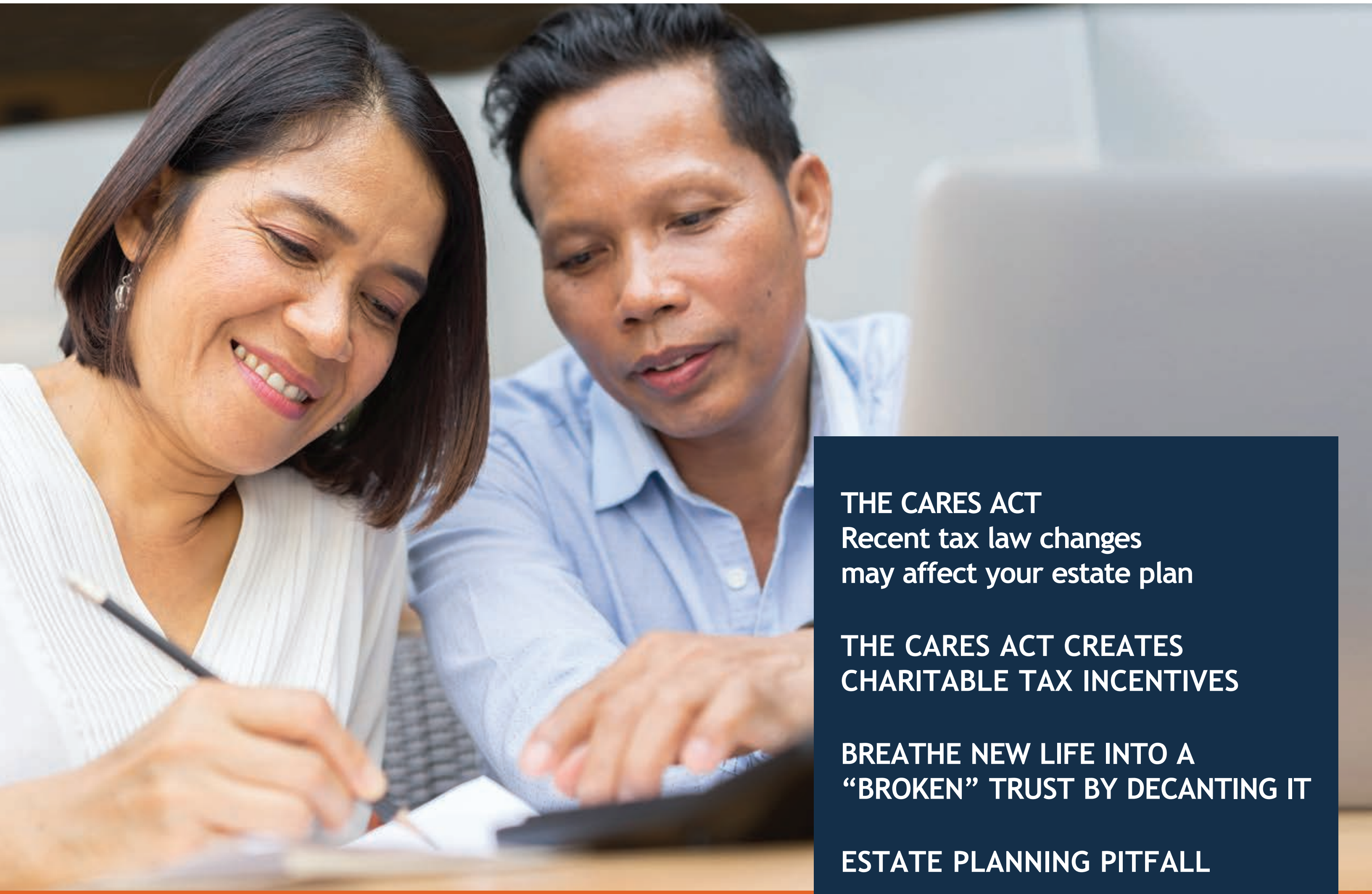
INSIGHT ON ESTATE PLANNING



AUGUST / SEPTEMBER 2020

Weinstock Manion

1875 Century Park East • Suite 2000
Los Angeles, CA 90067
T: (310) 553-8844 • F: (310) 553-5165
www.weinstocklaw.com

PRESERVING YOUR LEGACY

We welcome the opportunity to discuss your needs and help you meet your estate planning and wealth transfer objectives.

Please call us at (310) 553-8844 to let us know how we can be of assistance.

THE CARES ACT

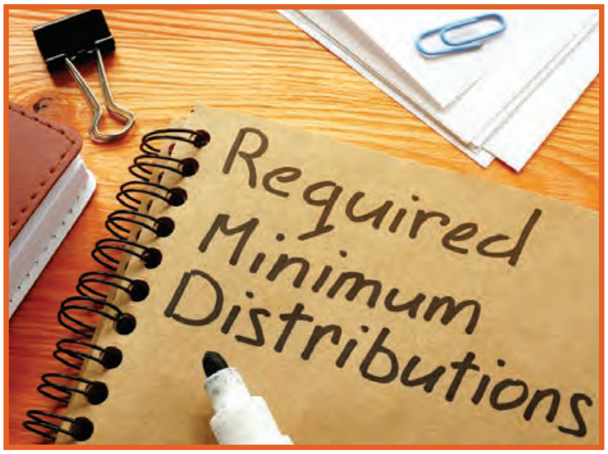
Recent tax law changes may affect your estate plan

The Coronavirus Aid, Relief and Economic Security (CARES) Act is designed to provide tax relief to individuals and businesses struggling to make ends meet due to the COVID-19 pandemic. But this law may also have a long-reaching impact on your estate plan. Notably, the CARES Act includes several provisions for participants in qualified retirement plans and IRAs that could span generations.

Required minimum distributions

Most individuals are familiar with the basic rules for required minimum distributions (RMDs). Generally, you must begin taking RMDs from qualified plans and traditional IRAs after attaining a specified age. Failing to do so results in a tax penalty equal to 50% of the amount that should have been withdrawn, in addition to the regular income tax.

Typically, account owners want to minimize RMDs so they can preserve more wealth for their heirs. But the Setting Every Community Up for Retirement Enhancement (SECURE) Act essentially eliminated the use of "stretch IRAs," where RMDs from plans or IRAs could be stretched over the long life expectancies of nonspousal beneficiaries. Beginning this year, for those inheriting a retirement account from someone other than his or her spouse, the account generally must be withdrawn within 10 years of the owner's death. Consider whether you want to revise your beneficiary designations in light of the new requirements.



Previously, the required beginning date for RMDs was April 1 of the year following the year in which you turned age 70½. However, the SECURE Act postponed the required beginning date from age 70½ to 72, effective in 2020, for those who were not 70½ as of the end of 2019 — that is, anyone born on or after July 1, 1949. This allows account owners the opportunity to accumulate more wealth through tax-deferred compounding.

The CARES Act adds even more protection. It allows you to suspend all RMDs for 2020 — even those for inherited accounts — without penalty. In other words, you don't have to take the usual RMDs, keeping your account intact. If you've already taken RMDs for the 2020 tax year, you have several options at your disposal. (See the sidebar "Available options for early RMDs" on page 3.)

COVID-19 distributions

The CARES Act carves out special tax breaks for qualified plan and IRA participants who are affected by the COVID-19 pandemic. As with the rules for RMDs, you have more flexibility in managing retirement assets.

For starters, you may be able to avoid a tax whammy if you withdraw funds from a qualified plan or IRA prematurely. Generally,

Available options for early RMDs

The Coronavirus Aid, Relief and Economic Security (CARES) Act allows you to skip RMDs in 2020. But what if you took RMDs earlier in the year? If your plan permits it or it's an IRA, you may be able to "undo" the distribution by depositing it back into your account. But you must act fast. IRS Notice 2020-51 generally allows RMDs taken in 2020 to be returned by Aug. 31, 2020. (It's possible this deadline could be extended, so check with your tax advisor for the latest information.) Note, also, that if the amount withdrawn qualifies as a COVID-19 distribution, you can roll the funds into another plan or IRA within three years, which means that there's less urgency to make a decision.

you owe a 10% penalty tax — plus regular income tax — for distributions made before age 59½. But the tax code includes certain exceptions to this general rule (such as for distributions made on account of disability). Now the CARES Act adds to the list in certain situations.

For example, the new law waives the additional 10% tax for distributions of up to $100,000 for an individual (or spouse) who is diagnosed with COVID-19 or has experienced adverse financial consequences due to the virus, such as being quarantined, being furloughed or laid off, having hours or income reduced, and losing child care.

Furthermore, although COVID-19 distributions remain taxable, you can choose to pay off the resulting tax liability ratably over three years. Alternatively, you may avoid tax completely by "rolling over" the funds to a qualified plan or IRA within the three-year period. (See the sidebar "Available options for early RMDs" above.) Be aware that the standard time period for a rollover is 60 days from the date of the distribution. However, IRS guidance described in the sidebar, "Available options for early RMDs," extends this period in some cases.

Retirement plan loans

If your 401(k) plan or profit-sharing plan permits it, you can borrow from your account, within certain limits, in times of need. Previously, the loan couldn't exceed the lesser of $50,000 or 50% of your vested account balance. For instance, if you have $500,000 in the account, you can borrow only up to $50,000.

Again, the CARES Act provides plan participants with extra flexibility. For hardship loans made between March 27, 2020, and September 23, 2020, you can borrow up to the lesser of $100,000 and 100% of your vested balance.

This gives plan participants considerably more wiggle room. Going back to our example where you have $500,000 in an account, you can now borrow $100,000 — twice as much as before.

In addition, the CARES Act extends the due date for loan repayments due in 2020 by one year. Generally, loans must be repaid within five years.

Finally, the new law permits employer-provided retirement plans to adopt these provisions immediately even if loans aren't currently allowed. Note that the plan must be amended by 2022.

Time to review your estate plan

It's always wise to review your estate plan from time to time, but especially after a potentially significant change in circumstances. Considering that the COVID-19 pandemic may have impacted your plan, it would be an appropriate time to consult with your estate planning advisor to determine if any of your strategies need to be revised. •

The CARES Act creates charitable tax incentives

Many individuals incorporate charitable giving into their estate plans, providing assistance to their favorite charities while preserving sufficient assets for their heirs. Typically, the charitable donations are structured to maximize the tax benefits on the books.

Now, the Coronavirus Aid, Relief and Economic Security (CARES) Act increases those tax incentives. Under the CARES Act — adopted to address the fallout from the COVID-19 pandemic — taxpayers of all stripes may realize additional tax savings from charitable donations in 2020.

New deduction for nonitemizers

Do you still itemize tax deductions on your federal tax return? It can make a big difference in how you approach charitable giving.

Significantly, you may choose to opt for the standard deduction on your personal return or claim itemized deductions within certain limits, based on which method provides the bigger write-off. In the past, moderate-to-high-income taxpayers generally fared better by itemizing. This allowed them to take advantage of deductible expenses like mortgage interest and state and local tax (SALT) payments.

The CARES Act authorizes, for those who don't itemize, an "above-the-line" deduction for up to $300 of charitable donations made to qualified organizations in 2020.

But the Tax Cuts and Jobs Act (TCJA) changed the landscape. Effective for 2018 through 2025, the TCJA limits certain deductions, such as SALT payments and mortgage interest, while suspending others, including write-offs for casualty and theft losses outside of disaster areas. At the same time, it effectively doubled the standard deduction. For 2020, the inflation-indexed deduction is $12,400 for single filers and $24,800 for joint filers.

The CARES Act authorizes, for those who don't itemize, an "above-the-line" deduction for up to $300 of charitable donations made to qualified organizations in 2020. The qualified organization doesn't have to be associated with COVID-19 assistance. However, the deduction isn't available for donations to donor advised funds (DAFs) or private foundations.

Higher AGI limit

The tax law imposes several annual limits on deductions for charitable contributions. For example, if you donate property to a charity, the deduction for the property can't exceed 30% of your adjusted gross income (AGI). Any excess may be carried over for up to five years.

Similarly, the annual deduction for monetary gifts is limited to 60% of AGI for 2018 through 2025. The TCJA raised this threshold from 50% of AGI. The CARES Act boosts the limit to 100% of AGI for the 2020 tax year. In effect, you can donate as much as your AGI for the entire year and write off the full amount. Any excess is still carried forward. As with the deduction for nonitemizers, the higher limit doesn't apply to gifts to DAFs or private foundations.

Qualified charitable distributions

Under current law, an individual age 70½ or older can transfer a "qualified charitable distribution" (QCD) directly from an IRA to a qualified organization without paying any tax on the transfer. On the other hand, you can't deduct the contribution, either. The amount of the QCD is limited to $100,000 per year ($200,000 for a married couple if both spouses qualify).

Notably, you can use a required minimum distribution (RMD) for a QCD. Participants in IRAs must begin taking RMDs from their accounts by April 1 of the year following the year in which they turn age 72. Previously, the required beginning date was based on age 70½ — the same as the age for QCDs — but the Setting Every Community Up for Retirement Enhancement (SECURE) Act pushed back the required beginning date, beginning in 2020.

The CARES Act doesn't touch the rules for QCDs, but it does permit IRA participants to skip RMDs for the 2020 tax year, including those required for inherited accounts. Nevertheless, you can still choose to transfer amounts directly from an IRA to a charity, assuming you qualify.

Follow the rules

The new tax laws may affect your charitable giving strategies in 2020. Contact your estate planning advisor to ensure that your charitable giving plan takes full advantage of the new tax laws. •

Breathe new life into a "broken" trust by decanting it

Building flexibility into your estate plan using various strategies is generally advised. The reason is that life circumstances change over time, specifically changing tax laws and family circumstances. This is especially true during the COVID-19 pandemic. One such strategy to consider is decanting a trust.

"Decanting" defined

Decanting is pouring wine or another liquid from one vessel into another. In the estate planning world, it means "pouring" assets from one trust into another with modified terms. The rationale underlying decanting is that, if a trustee has discretionary power to distribute trust assets among the beneficiaries, it follows that he or she has the power to distribute those assets to another trust.

Depending on a trust's language and the provisions of applicable state law, decanting may allow the trustee to:

- Correct errors or clarify trust language,
- Move the trust to a state with more favorable tax or asset protection laws,
- Take advantage of new tax laws,
- Remove beneficiaries,
- Change the number of trustees or alter their powers,
- Add or enhance spendthrift language to protect the trust assets from creditors' claims, or
- Move funds to a special needs trust for a disabled beneficiary.

Unlike assets transferred at death, assets that are transferred to a trust don't receive a stepped-up basis, so they can subject the beneficiaries to capital gains tax on any appreciation in value. One potential solution is to use decanting. Decanting, for instance, can authorize the trustee to confer a general power of appointment over the assets to the trust's grantor. This would cause the assets to be included in the grantor's estate and, therefore, to be eligible for a stepped-up basis.

In the estate planning world, decanting means "pouring" assets from one trust into another with modified terms.

Follow your state's laws

Many states have decanting statutes, and in some states decanting is authorized by common law. Either way, it's critical to understand your state's requirements,

such as, in some states, the trustee being required to notify the beneficiaries or even obtain their consent to decanting; others require neither. And some states prohibit decanting if the trustee has discretion over distributions of income but not principal, or if distributions are limited by an "ascertainable standard," such as a beneficiary's health, education, maintenance or support.

Even if decanting is permitted, there may be limitations on its uses. Some states, for example, prohibit the use of decanting to eliminate beneficiaries or add a power of appointment, and most states will not allow the addition of a new beneficiary. If your state doesn't authorize decanting, or if its decanting laws don't allow you to accomplish your objectives, it may be possible to move the trust to a state whose laws meet your needs.

Beware the tax implications

One of the risks associated with decanting is uncertainty over its tax implications. Let's say a beneficiary's interest is reduced. Has he or she made a taxable gift? Does it depend on whether the beneficiary has consented to the decanting? If the trust language authorizes decanting, must the trust be treated as a grantor trust? Does such language jeopardize the trust's eligibility for the marital deduction? Does distribution of assets from one trust to another trigger capital gains or other income tax consequences to the trust or its beneficiaries?

Don't try this at home

Decanting a bottle of wine — that is, pouring it into another container — helps to remove sediment and allows the wine to "breathe." In the same vein, decanting can breathe new life into an irrevocable trust. Before acting, consult with your estate planning advisor. •

ESTATE PLANNING PITFALL

You haven't created a road map for your estate plan

You've probably spent a lot of time creating documents for your estate plan, including a will, trusts and a power of attorney. While these documents are essential for your plan, your family could also use a "road map" to navigate the aftermath.

Typically, the road map will be in the form of a "letter of instructions" or similar missive that isn't legally binding. But it can still be a valuable source of information in trying times. This is especially true if your family is devastated by a loss due to COVID-19 or some other unexpected calamity.

What should the road map cover? The details will vary, but the following are some typical components:

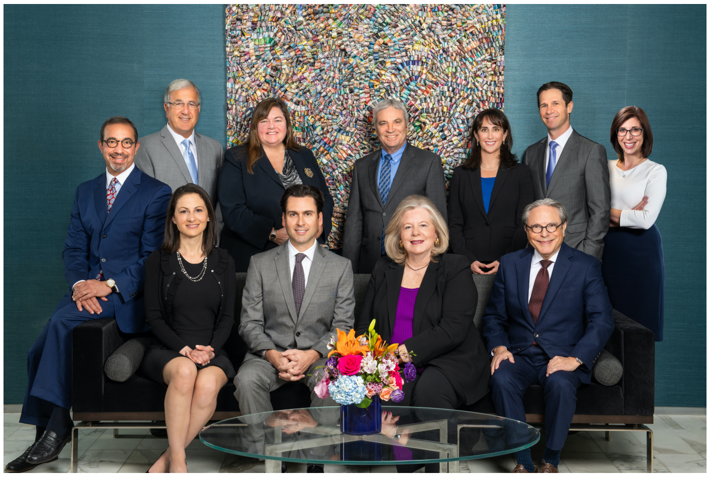
Inventory of assets. Provide a detailed inventory of your assets. Besides the obvious ones like banking and retirement accounts, include collectibles and other property that might be overlooked.

Digital assets. Today, it's just as important to list digital assets, such as email accounts, online bank and brokerage accounts, online photo galleries, digital music and book collections, and social media accounts, as well as their login information and passwords.

Location of documents. Estate planning documents won't do your family any good if they can't be found. Specify the locations of trust documents, tax returns and records, powers of attorney, insurance policies, deeds, automobile titles, and other important papers.

Miscellaneous items. Point out other items that might fall between the cracks, such as funeral, burial or cremation arrangements. You may also want to state personal preferences — for example, your desires concerning the education of your grandchildren.

Finally, provide the contact information for your estate planning advisors. They can help steer your family in the right direction at the time when it's needed most.



Weinstock Manion

PRESERVING YOUR LEGACY

For over 60 years, the attorneys and staff of Weinstock Manion have focused on providing personalized, high-quality counsel to moderate to high net worth individuals, real estate investors, business owners, charitable organizations, beneficiaries and fiduciaries in the following practice areas:

- Estate Planning
- Wealth Transfer Planning
- Estate and Trust Administration
- Estate and Trust Litigation
- Business Succession Planning
- Charitable Planning and Family Foundations

Comprehensive Estate Planning Services

Working with our clients' other trusted advisors, our team of specialized attorneys and paralegals create and implement comprehensive, creative and practical estate plans with the goals of maximizing wealth transfer in accordance with our clients' wishes and reducing taxation.

Estate and trust administration can have significant financial consequences for both current and future beneficiaries. In an effort to minimize income and estate taxes while maximizing estate and trust income for beneficiaries, our process involves extensive collaboration between our estate planning, taxation and transactional attorneys.

Weinstock Manion's litigators represent both fiduciaries and beneficiaries in estate and trust disputes. Our litigators are skilled at handling claims for breach of fiduciary duty, beneficiary disputes, disputes regarding the validity of wills and trusts, undue influence and all aspects of conservatorships and guardianships.

For many clients, ensuring the future of their family business through a well-structured succession plan is an essential component of their estate plan. Our team of transactional, tax and estate planning attorneys work with our clients' other trusted advisors to develop plans for retirement, management transition and liquidity events.

Supporting charitable causes is important to many of our clients. We help our clients support the causes they are passionate about in a tax-efficient manner through thoughtful charitable planning, including the creation of family foundations.

At Weinstock Manion we understand that significant wealth can lead to complex personal and financial issues that may result in family conflict. Our goal is to help implement wealth transfer plans that minimize potential conflicts while promoting enduring legacies for generations to come.

We invite you to explore our team and services, and to contact us to learn more about how we may collaborate to preserve your legacy.