

Retirement Account Withdrawal Considerations under the CARES Act

The Coronavirus Aid, Relief and Economic Security (“CARES”) Act includes a provision that lifts the income tax penalty for early withdrawals from retirement accounts. Under this new rule, qualifying individuals may withdraw up to \$100,000 from a retirement plan during 2020 without incurring the 10% tax penalty that usually applies to such withdrawals made prior to age 59½. In addition, the income tax on that withdrawal can be spread out over the next three tax years. An individual qualifies for this relief if the account holder, his or her spouse or dependent was diagnosed with COVID-19, or if the account holder has experienced adverse economic consequences as a result of COVID-19, such as a layoff, furlough, inability to work due to illness or lack of childcare, a reduction in work hours, or need to shutter a business due to COVID-19.

While this benefit may be appealing and helpful to many people, individuals who are in the midst of a divorce need to consider whether his or her spouse is entitled to share in those retirement assets as part of the division of property under the divorce, and how such withdrawal may impact that division. Additionally, if a divorce action has already been filed in New York, automatic orders are in place that restrict a party to a divorce action from making such a withdrawal without the consent of the other party or court order. If such a withdrawal is made, either before a divorce filing, or on consent, and both parties benefit from such a withdrawal, the deferred tax liability will need to be shared as well.