April 11, 2023

Ms. Carol Weiser
Benefits Tax Counsel
Office of the Benefits Tax Counsel
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Ms. Rachel Levy
Associate Chief Counsel (EEE)
Office of Chief Counsel
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

RE: Additional Comments to Proposed Regulations on Required Minimum Distributions from Inherited IRAs

Dear Mmes. Weiser and Levy:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee has been authorized by the TXCPA Board of Directors to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Board of Directors or Executive Board and, therefore, should not be construed as representing the view or policies of the TXCPA.

Comments on IRS Guidance Regarding Minimum Distributions from Inherited IRAs

In February 2022, the IRS issued proposed regulations REG-105954-20 regarding the tax treatment of required minimum distributions (RMD) of inherited IRAs. On July 15, 2022, we submitted a letter to former Commissioner Rettig requesting that the proposed regulations be withdrawn and that new guidance be issued that would address the problems we noted in the proposed regulations.[1] On Dec. 22, 2022, the American Institute of CPAs, in their letter to you, expressed concerns similar to ours with the proposed regulations.[2]

We very much appreciate the IRS issuing Notice 2022-53 generally postponing the proposed regulations to 2023. However, merely postponing is not sufficient. As discussed below, several issues related to inherited IRAs must be addressed prior to finalizing the regulations.

The following are concerns we share with tax practitioners and taxpayers.

Conformity With Statutory Language

As we discussed in our previous letter, foremost among our concerns is the position in the proposed regulations that, in most circumstances, a beneficiary of an inherited IRA would be subject to RMDs in each of the 10 years

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[1] txcpa-irs-iras071522.pdf
[2] 56175896-aicpa-comments-notice-2022-53-final.pdf

subsequent to having received the inheritance. This position is contrary to Section 401(a)(1)(H)(i), which was added to the Internal Revenue Code by the *Setting Every Community Up for Retirement Enhancement (SECURE) Act*. This section only specifies that a beneficiary of an IRA must completely distribute the proceeds of the IRA within 10 years. The plain meaning of the language in the section does not specify that any annual distributions are required. Indeed, the Joint Committee on Taxation's explanation of the *SECURE Act's* provision states: "Thus, the entire interest must be distributed by the end of the tenth calendar year after the death of the designated beneficiary."[3]

We therefore strongly recommend deleting the language in Prop. Reg. 1.401(a)(9)-5(d)(1) specifying that RMDs must be distributed for each of the 10 years following the death of the employee/IRA owner. Doing so is necessary to be consistent with the statutory language of the *SECURE Act*.

The Need for Additional Guidance

While we believe the regulations incorrectly interpret the law and should be revised as discussed above, we encourage the IRS to, at the very least, provide more permanent guidance and relief for taxpayers to help them come into compliance with the new IRS requirements. Many taxpayers and their advisers understandably believed the *SECURE Act* allowed taxpayers to postpone minimum distributions from inherited IRAs. In the requested guidance below, we use the term "IRA" to reflect both IRAs and employer-sponsored retirement accounts, such as 401(k)s.

- The proposed regulations issued on Feb. 24, 2022, should be withdrawn and rewritten as discussed above.
- In addition, beneficiaries who took distributions in 2021 or 2022 from inherited IRAs should be permitted to reinstate those distributions into the IRA. This would be in conformity with IRS Notice 2020-51, which permitted "roll backs" where taxpayers received what they understood were required distributions from IRAs, but which became eligible for deferral under the *Coronavirus Aid, Relief and Economic Security (CARES) Act*.
- If the 10-year annual distribution requirement is retained in the final regulations, the 10-year period for the "total" RMD should begin only after the regulations are made final. Otherwise, IRS guidance should specify that taxpayers who inherited IRAs in 2021 and 2022 are not subject to any penalties for failure to comply with the annual distribution requirement.
- Likewise, if the 10-year annual distribution requirement is retained in the final regulations, the IRS should provide guidance specifying the amount of RMD required for each of the 10 years for IRAs inherited in 2020, 2021 and 2022. Presumably, this should be zero for the early years unless some "catch-up" provision is envisioned.
- The proposed regulations should provide for an extended RMD in circumstances where a substantial portion of the IRA's assets are illiquid.
- Penalties applicable to custodians of the IRA should be withdrawn. In most circumstances, IRA custodians have only a reporting function with little or no control over distributions.

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[3] Staff of the Joint Comm. on Tax'n, 116th Cong., General Explanation of Public Law 116-1 164 (2022).

Summary

Based on the above, we believe it is only fair and reasonable to change these proposed regulations to provide relief to taxpayers, tax professionals, as well as other affected professionals, and the IRS. Revising the proposed regulations to require RMDs only by the end of the 10th year is necessary to comply with the statute.

The Texas Society of CPAs wants to help the IRS in the efficient administration of our tax laws. We would be pleased to further discuss our comments with you or your staff. Please feel free to contact me at 214-749-2462 or at dcolmenero@meadowscollier.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tx.cpa.

Sincerely,

David E. Colmenero, J.D., LL.M., CPA
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
The Honorable Daniel Werfel, Commissioner, Internal Revenue Service
Mr. William Paul, Principal Deputy Chief Counsel (Technical) and Deputy Chief Counsel, Internal Revenue Service
Jan Lewis, CPA, Chair, American Institute of CPAs Tax Executive Committee