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IRS Provides Guidance on Emergency Personal Expense and Domestic Abuse Victim Distributions Under SECURE 2.0

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As discussed in our prior alert, the SECURE 2.0 Act of 2022 ("SECURE 2.0") added new exceptions to the 10% additional tax for emergency personal expense distributions and domestic abuse victim distributions. These new distributions became effective January 1, 2024. On June 20, 2024, the IRS issued Notice 2024-55 ("Notice"), which provides new guidance regarding these distributions.

Background

Under SECURE 2.0, an emergency personal expense distribution is a distribution made from an eligible retirement plan to an individual for the purpose of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. No more than one distribution per calendar year can be treated as an emergency personal expense distribution. An emergency personal expense distribution cannot exceed the lesser of (i) $1,000 or (ii) an amount equal to the excess of the individual's vested accrued benefit over $1,000.

A domestic abuse victim distribution is any distribution from an eligible retirement plan to a domestic abuse victim if made during the one-year period beginning on the date on which the individual is a victim of domestic abuse by a spouse or domestic partner. Domestic abuse victim distributions can be in an amount up to $10,000 or 50% of the present value of an individual's vested accrued benefit (if less).

For both emergency personal expense distributions and domestic abuse victim distributions, SECURE 2.0 provides that a plan administrator may rely on an individual's written certification that the individual satisfies the conditions for the distribution. In addition, a plan must accept repayment of emergency personal expense or domestic abuse victim distributions within three years from receipt of the distribution, provided the individual is eligible to make a rollover contribution to the plan at the time of repayment.

Emergency personal expense distributions and domestic abuse victim distributions are includible in gross income, but are not subject to the 10% additional tax under Internal Revenue Code ("Code") Section

72(t)(1).

Key Takeaways: New Guidance

In the Notice, the IRS provides the following new guidance regarding emergency personal expense distributions:

- Whether an individual has an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses is determined by the relevant facts and circumstances for each individual, including whether the individual or a family member has expenses relating to:
  - Medical care;
  - Accident or loss of property due to casualty;
  - Imminent foreclosure or eviction from a primary residence;
  - The need to pay for burial or funeral expenses;
  - Auto repairs; or
  - Any other necessary emergency personal expenses.

- Emergency personal expense distributions generally may be provided by Code Section 401(a) defined contribution plans (including 401(k) plans), Code Section 403(a) annuity plans, Code Section 403(b) annuity contracts, governmental 457(f) plans, and IRAs.

- Individuals taking an emergency personal expense distribution in one calendar year are not permitted to take another emergency personal expense distribution for the following three calendar years unless the prior distribution is fully repaid to the plan or the individual's subsequent contributions to the plan equal or exceed the amount of the distribution that has not been repaid.

The IRS also provides the following new guidance with respect to domestic abuse victim distributions:

- The term "domestic abuse" means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household.

- Domestic abuse victim distributions generally may be provided by an eligible retirement plan described in Code Section 402(c)(8)(B), except for defined benefit plans or plans subject to spousal consent requirements (such as money purchase plans).

- The $10,000 limit for domestic abuse victim distributions is subject to annual cost-of-living adjustments.

The Notice confirms that emergency personal expense distributions and domestic abuse victim distributions are optional provisions and are not required to be adopted by plans.

Kilpatrick Insight: SECURE 2.0 authorizes the IRS to create exceptions to the administrator's ability to rely on an individual's self-certification for a personal emergency distribution when the administrator has actual knowledge that the individual does not qualify or learns of an individual's misrepresentations. The Notice does not establish any exceptions to reliance, but the IRS requests comments on whether regulations should be adopted providing exceptions to the reliance on an employee's certification and procedures to address cases of employee misrepresentation. SECURE 2.0 does not authorize the IRS to create exceptions to the administrator's ability to rely on an individual's self-certification for a domestic abuse victim distribution. As a result, employers should be able to rely on an employee's self-certification for a domestic abuse victim distribution in all cases without exception.

In addition, the Notice does not discuss whether a plan may eliminate emergency personal expense or domestic abuse victim distributions in the future under the anti-cutback rules under the Code. The anti-cutback rules provide an exception for the elimination of hardship withdrawals, which are similar in-service distributions based on an employee's needs. We hope to see future guidance providing an exception to the anti-cutback rules for these distributions.