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IRS Extends Relief for Remote Notarization of Spousal Consents

by R. Sterling Perkinson

In June, the IRS provided temporary relief that allows for spousal consents for retirement plan loans or distributions to be witnessed remotely through audio visual equipment by a notary public in accordance with a state remote notarization law or by a plan official through December 31, 2020. See our prior blog post here. In recognition of the ongoing COVID-19 emergency, the IRS has issued Notice 2021-03, which extends this relief through June 30, 2021.

Further, Notice 2021-03 includes a request for comments on whether the IRS should make permanent changes to the general requirements that a spousal consent be executed in the "physical presence" of a notary public or a plan official, and if so, what safeguards should be put in place to prevent fraud, coercion or other abuse in obtaining a spousal consent to a loan or distribution. Any changes to the current rules regarding the "physical presence" would be subject to further notice and comment.