ED SLOTT'S IRA ADVISOR

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Tax & Estate Planning for Your Retirement Savings

WHAT'S INSIDE?

Back to the Future: Court Rules Secure 2.0 Statute of Limitations for 6% Penalty Not Retroactive

In a recent decision released February 28, 2024, Couturier v. Commissioner, No. 19714-16; 162 T.C. No. 4, the U.S. Tax Court ruled that the SECURE 2.0 statute of limitations (SOL) for the 6% excess IRA contributions penalty is not retroactive. This means that IRA owners cannot avoid correcting excess contributions made for years before 2022. It also likely means that IRA owners and plan participants who failed to take required minimum distributions (RMDs) for those years must fix those missed RMDs.

Excess IRA Contributions

Excess IRA contributions are contributions that exceed the maximum amount that can be contributed to a traditional IRA or Roth IRA for any year. Examples include making a Roth contribution when income exceeds the allowable limits (for 2024: $230,000 - $240,000 phase-out for married filing jointly; $146,000 - $161,000 phase-out for single taxpayers), contributions that exceed the maximum annual dollar limit (for 2024: $7,000 for those under age 50), and rolling over an amount not eligible for a rollover (e.g., a rollover after the 60-day deadline, an RMD, or a Roth conversion before an RMD is paid out).

Excess contributions are subject to a 6% penalty each year the excess amount remains in the IRA until they are fixed. The 6% penalty can be avoided if the IRA owner withdraws or recharacterizes the excess, along with associated earnings or losses (net income attributable or "NIA"), by October 15 of the year after the year for which the contribution was made.

If the October 15 deadline is missed, the excess can still be corrected by withdrawal or by carrying the contribution forward and using it up in a future year. (Recharacterization is not available after the October 15 deadline.) However, a 6% penalty will apply each year the excess remains in the account as of December 31 of that year, and Form 5329 must be filed for each such year.

Missed RMDs

When retirement account owners reach their required beginning date (RBD), RMDs must be withdrawn. The due date for most RMDs is December 31. However, account owners have extra time to receive their first RMD. That deadline is April 1 of the year following the first RMD year (for IRA owners, the year the owner turns age 73). Beneficiaries, including Roth IRA beneficiaries, are also subject to RMDs. Some have annual RMDs, while others are subject to a 10-year payout period.