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Coronavirus Relief for People Going Through Divorce: Who knew?

We, family lawyers, have a saying that we see good people at the worst point in their lives. Compound that with the current coronavirus pandemic and associated economic downturn, and if you represent people getting divorced, you have a recipe for endless angina on your hands.

Every so often, however, we get thrown a bone. The most recent comes from the federal government as a component of the CARES Act. Specifically, I am referencing the provision allowing for emergency withdrawals from 401(k), 403(b) and 457 accounts, as well as IRAs. While it may not be the best financial planning or most logical way to solve a problem, it does give people trying to resolve their divorces some added flexibility.

Usually, to withdraw money from any form of a tax-deferred retirement account, without incurring the early withdrawal penalty, the account holder needs to be over 59 ½ years of age. Then the withdrawal is taxed at regular income rates payable in the tax year of the withdrawal.

Under CARES, an eligible participant can withdraw up to $100,000.00 from his or her retirement accounts with no early withdrawal penalty, no 20% mandatory withholding and spread the applicable income tax payment over three years. Additionally, if the funds are paid back in those three years, no tax is due.

The only catch is that to be eligible for this program, you need to be directly affected by the coronavirus. This means either the plan participant, spouse, or a dependent of the participant has been diagnosed with COVID-19, the participant has been laid off, furloughed or experienced a reduction in hours or inability to work because of COVID-19, or experienced a lack of childcare associated with the pandemic.

Essentially what the federal government is offering is a three year, interest-free $100,000.00 loan from your retirement accounts as long as you have been affected by the coronavirus. Additionally, while retirement plan loans are usually limited to $50,000.00, this program allows for up to $100,000.00 to be withdrawn, in total, if a person has more than one retirement account.

Employers and plan administrators need to amend their plans to allow for these CARES provisions. In taking a loan or withdrawing from a retirement plan, particularly at this point, the plan participant may very well be foregoing the anticipated run-up in the equity markets that are expected when the pandemic ends. They will need to either pay the money back or pay the taxes due, but think of the ramifications in resolving a divorce. Suddenly the tax implications of taking $100,000.00 out of a retirement account have been minimized. While this might not be the perfect solution for everyone, it is another tool in the toolbox and only available for a limited amount of time.

If you are thinking about divorce or are in the midst of one, you need a lawyer who knows how to use all of the tools available to help you get through the process. The family law attorneys of Weber Gallagher know what tools are in the toolbox and, more importantly, how and when to use them.