



ED SLOTT'S IRA ADVISOR

FEBRUARY 2024

Tax & Estate Planning for Your Retirement Savings

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IRS Releases Guidance on SECURE 2.0

The IRS recently released some much-anticipated guidance on 12 provisions from the [SECURE 2.0 Act, Notice 2024-02](#) in a question-and-answer format and provides welcome clarification on several provisions that are already currently in effect, including the new exception to the 10% penalty for terminal illness and new rules for SEP and SIMPLE IRA plans.

Exception for Terminal Illness

SECURE 2.0 creates a new penalty exception for IRA and workplace plan (but not 457(b) plan) withdrawals for those who are certified by a physician as having a terminal illness. While the standard definition of "terminal illness" requires that the illness is "reasonably expected to result in death in 24 months or less," this new exception increases that period to 84 months (7 years). There is no maximum limit on how much can be withdrawn penalty-free under this exception, and the withdrawn funds can be used for any reason. Distributions taken under the terminal illness exception can be repaid over three years, starting with the day after the distribution.

The Notice confirms that certification of terminal illness by a physician prior to taking the retirement account distribution is necessary to qualify for this exception. The certification could then be provided to the plan administrator or the IRA custodian.

The physician who certifies must be "a doctor of medicine or osteopathy that is legally authorized to practice medicine and surgery by the state in which the doctor performs such function or action." The certification must include a narrative describing the individual's illness or physical condition as well as specifically state that the condition can be reasonably expected to result in death in 84 months or less. A physician cannot certify his own terminal illness.

The Notice confirms that it is optional for employer plans to allow terminally ill individuals to take distributions. However, if a plan does not permit such distributions, the employee is still permitted to treat an otherwise permissible in-service distribution (e.g., a hardship withdrawal) as a terminal illness distribution and qualify for the exception to the 10% penalty. IRA owners can also claim the exception if the IRA distribution is coded as an early distribution.

To do this, the recipient would claim the terminal illness exception on [Form 5329](#). The individual should keep the certification of terminal illness with his tax records.

Example 1: Luigi, age 48, runs a highly successful contracting company that specializes in asbestos mitigation. Sadly, after years of exposure and heavy smoking, Luigi was diagnosed with cancer. His doctors all agree that he has less than 7 years to live. Before he gets too sick, Luigi wants

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