

## SECURE 2.0 ACT of 2022

The SECURE 2.0 Act of 2022 is Division T of the Consolidated Appropriations Act of 2023 (Public Law 117-183), signed by President Biden on December 29, 2022. Here are the main tax related provisions of the SECURE 2.0 Act as we read them on Tuesday, January 3, 2023 (just a few days after the law was signed).

- I. Expanded Automatic Enrollment in Retirement Plan - New IRC Section 414A (Act section 101)
  - A. Section 401(k) and section 403(b) plans must automatically enroll participants in the plans as soon as the employees become eligible.
    - 1. The employee can elect out of this enrollment.
    - 2. All section 401(k) and section 403(b) plans existing before December 29, 2022 are grandfathered and do not need to follow this provision.
    - 3. This provision does not apply to a SIMPLE plan.
    - 4. The following businesses are exempt from following this provision:
      - a) Business with 10 or fewer employees.
      - b) Businesses that have been in business for less than three years.
      - c) Church plans.
      - d) Government plans.
  - B. The contribution by the participant is to be a uniform percentage of compensation during the first year of participation of not less than 3% and not more than 10% (unless the participant elects another percentage or elects out of participating).
    - 1. Effective the first day of each subsequent plan year, this percentage increases by one percentage point, (to at least 10%, but not more than 15%).
  - C. This provision applies for plan years beginning after December 31, 2024.
- II. Modification of Credit for Small Employer Pension Plan Start-up Credit (Act section 102)
  - A. The credit of 50% is increased to 100% for employers who do not have more than 50 eligible employees in the prior year.
  - B. An additional credit is available for the matching contributions by the employer, if the employer is a small employer.
  - C. If the employer has not more than 50 employees, the credit in the first year is 100% of the matching contributions. If the employer has more than 50 employees, the percentage is reduced by 2 percentage points for each additional employee above 50.
  - D. The credit percentage for the:
    - 1. 1<sup>st</sup> year is 100%.

2. 2<sup>nd</sup> year is 75%.
3. 3<sup>rd</sup> year is 50%.
4. 4<sup>th</sup> year is 25%.
5. 5<sup>th</sup> and later years is 0%.

- E. The maximum credit is \$1,000 per employee, before taking into account the reduction mentioned above.
- F. The credit does not apply to any matching contribution for any employee who receives wages from the employer in excess of \$100,000. This amount is indexed for inflation
- G. This provision is effective for taxable years beginning after December 31, 2022.

III. Saver's Match. (Act section 103)

- A. Effective for taxable years beginning AFTER December 31 2026, new IRC section 6433 creates a new credit for lower income taxpayers who are putting money into retirement accounts.
- B. It appears this is a replacement for the Saver's Credit currently enjoyed by many lower income taxpayers. (Note – the Saver's Credit expires after December 31, 2025.)
- C. This new section directs the Secretary of the Treasury to deposit directly into the qualifying taxpayer's retirement account an amount equal to 50% of the amount the employee contributed during the year.
- D. Many of the rules are the same as the existing Saver's Credit, except:
  - a. If the "matching" contribution is less than \$100 for the taxable year, such a contribution will not apply, and the taxpayer will receive an income tax credit on the tax return.
  - b. The "50%" is reduced for taxpayers who have modified adjusted gross income for such taxable year over:
    1. Married Filing Jointly/Qualifying Surviving Spouse - \$41,000. The phase out range is \$30,000.
    2. Head of Household - \$30,750. The phase out range is \$22,500.
    3. All other filers- \$20,500. The phase out range is \$15,000.
  - c. The definition of "modified adjusted gross income", for this purpose, is the normal AGI after adding back income excluded under the foreign income provisions, but ALSO by adding back any elective deferrals or any deduction allowed by making a traditional IRA contribution.
  - d. The matching the government contributes cannot be contributed into a Roth IRA or Roth portion of a qualified plan.
  - e. If the taxpayer does not qualify for the government contribution, such as when a taxpayer later amends the tax return and has modified AGI too high, the overcontribution is considered an additional tax to be

reported on the taxpayer's return for the year in which the overcontribution is determined.

- E. There are additional rules applicable to these accounts. Plan administrators and taxpayers should read the actual law for more details, as well as watching for IRS guideline in the future.

IV. Delay in RMD Starting Date (Act section 107)

- A. The new RMD starting date is:
  - 1. Age 73 for anyone who is attains age 72 AFTER December 31, 2022 and attains age 73 BEFORE January 1, 2033.
  - 2. Age 75 for anyone who attains age 74 AFTER December 31, 2032.

V. Indexing of IRA Catch-Up Limit (Act section 108)

- A. Effective with calendar years beginning after calendar year 2023, the \$1,000 catch-up amount will be increased for inflation.

VI. Higher Catch-up for Deferred Retirement Plans (Act section 109)

- A. Effective for taxable years beginning after December 31, 2024, taxpayers who are ages 60-63 at the end of the taxable year, the catch-up amount would be increased to the greater of:
  - 1. \$10,000, or
  - 2. 150% of the catch-up allowed for taxpayers who are not age 60-63 as of the end of the applicable taxable year.
- B. For SIMPLE plan deferrals, the \$10,000 is replaced with \$5,000.

VII. Treatment of Student Loan Payment as Elective Deferrals for Purposes of Matching Contributions (Act section 110).

- A. An employer can make a "matching" contribution to an employee's defined contribution account equal to the employee's payments on his/her qualified student loans.
- B. The amount of student loan payments during the year are limited to the employee's compensation for the year, reduced by any elective deferrals made by the employee.
- C. The employee must certify to the employer the amount of the payments made on qualified student loans.
- D. This provision applies to section 401(k), section 403(b), and section 457 plans as well as SIMPLE plans.
- E. This provision applies to plan years beginning after December 31, 2023.



VIII. Military Spouse Retirement Plan Eligibility Credit for Small Employers (Act section 112).

- A. New IRC Section 45AA provides an eligible small employer with a tax credit equal to:
  - 1. \$200, plus
  - 2. 100% of the first \$300 of employer contributions.
- B. This provision is available for the first year the military spouse participates plus the following two years.
- C. The credit is part of the General Business Credit.
- D. This provision is effective for taxable years beginning after December 29, 2022.

IX. Small Immediate Financial Incentives for Contributing to a Plan (Act section 113)

- A. Employers can now give applicable employees a small financial incentive in order to get them to participate in a deferral retirement plan.
- B. We have seen the amount of "\$25" mentioned in various reports, but we have not traced down the specific amount.

X. Penalty Free Distributions

- A. More exceptions exist for early withdrawals without incurring the 10% early distribution penalty.
- B. Up to \$1,000, but not more than the employee's nonforfeitable accrued benefit under the plan, for "certain emergency expenses". (Act section 115)
  - 1. This is defined as meaning "any distribution from an applicable eligible retirement plan for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses."
  - 2. A taxpayer taking advantage of this provision is NOT able to use it again for the following three calendar years.
  - 3. This provision is available for distributions made after December 31, 2023.
- C. In the case of domestic abuse, up to \$10,000, but not more than 50% of the present value of the nonforfeitable accrued benefit of the employee under the plan. (Act section 314)
  - 1. The distribution is made during the 1-year period beginning on the date on which the individual is a victim of domestic abuse by a spouse or domestic partner.
  - 2. "Domestic abuse" for this purpose 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.

3. This provision is effective for distributions made after December 31, 2023.
- D. In the case of a taxpayer with a terminal illness, distributions made after December 29, 2022. The Secretary will identify the form and manner in which the taxpayer is to show evidence of being terminally ill.
- E. Up to \$22,000, combined for all years, in connection with Federal Declared Disaster Areas: (Act section 331)
  1. The distribution is to take place on or after the first day of the incident period of a qualified disaster and before the date that is 180 days after the applicable date with respect to such disaster.
  2. The distribution is to a taxpayer whose principal place of abode at any time during the incident period is located in the qualified disaster area AND has sustained an economic loss by reason of such qualified disaster.
- XI. Higher Nonelective Contributions to SIMPLE Plans (Act section 116)
  - A. This provision permits employers making eligible nonelective contributions to a SIMPLE plan to make the contributions at a percentage higher than the former 2% level.
  - B. The new percentage cannot exceed 10%.
  - C. This provision is effective for taxable years beginning after December 31, 2023.
- XII. One-Year Reduction in Service Required for Long-Term Part-Time Workers to Participate (Act section 125)
  - A. Formerly an employer was required to permit a part-time worker to participate in a deferred compensation retirement plan after the employee had been employed by the employer for three years.
  - B. This time period is now reduced to two years, effective for taxable years beginning after December 31, 2024.
- XIII. Reduction in Excise Tax on Certain Accumulations in Qualified Retirement Plans (Act section 302)
  - A. The 50% penalty for not taking the RMD for a tax year is reduced to 25%.
  - B. The penalty is further reduced to 10% IN CERTAIN SITUATIONS.
    1. This further reduction applies in the case of a taxpayer:
      - a. Who receives a distribution, during the correction window, of the shortfall, and
      - b. Who submits a return, during the correction window, reflecting the excise tax (aka, penalty).

2. The "correction window" is the period of time beginning on the date the tax is imposed on the shortfall, and ending on the earlier of:
  - a. The date of mailing a notice of deficiency,
  - b. The date on which the tax is assessed, or
  - c. The last day of the second taxable year that begins after the end of the taxable year in which the tax is imposed.
3. These provisions are effective for taxable years beginning after December 29, 2022.

XIV. Retirement Savings Lost and Found (Act section 303)

- A. Not later than December 29, 2024, the Secretary shall establish a searchable database of retirement accounts that are "lost".

XV. Increase in Level for Mandatory Distributions (Act section 304)

- A. The current \$5,000 or less level which allows employers to require former employees to take a distribution of their entire retirement account is increased to \$7,000.
- B. This is effective for distributions made after December 31, 2023.