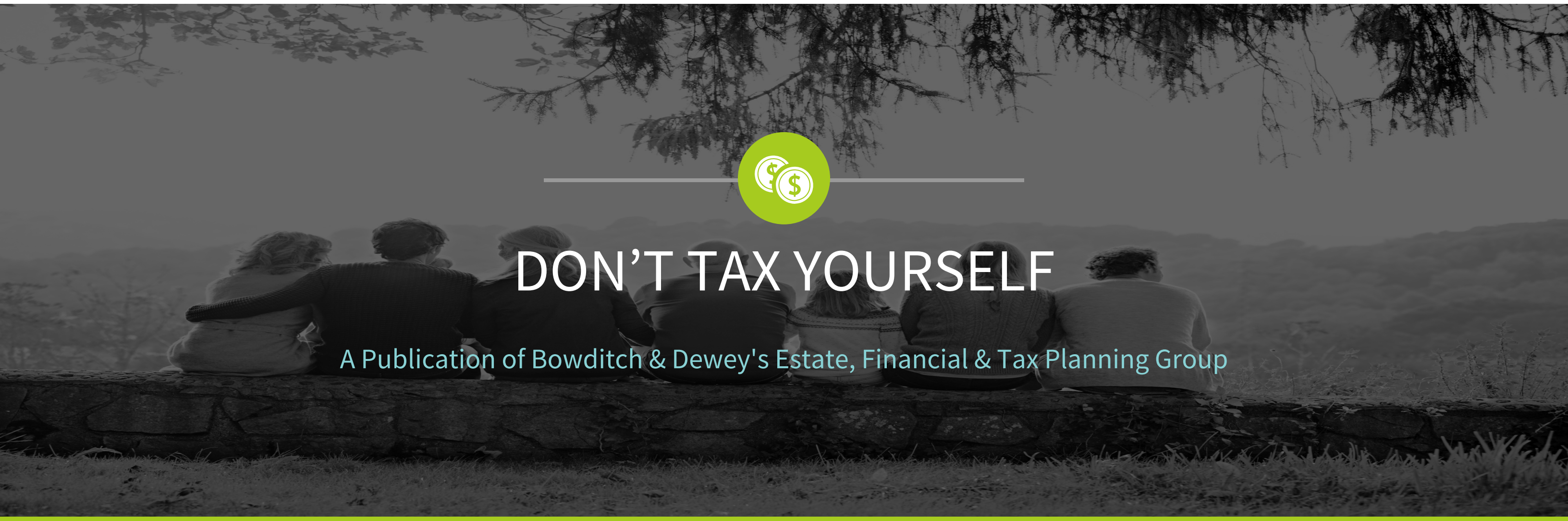

Do the Retirement Plan Provisions in Your Trust Still Align with Your Estate Planning Goals Following Updates to the SECURE Act?

BY BOWDITCH & DEWEY • MARCH 3, 2025

Following the IRS' finalization of the SECURE Act regulations on July 18, 2024, it is a good time to review the retirement benefit provisions of your trust to make sure they still align with your estate planning goals.

Your estate plan may be structured so that all or some of your retirement accounts are payable to your trust after you pass away. If so, then the changes to the retirement plan payout rules under the SECURE Act may affect how trust beneficiaries receive retirement plan distributions from the trust. This is of particular concern if your estate plan was drafted prior to the SECURE Act going into effect on January 1, 2020.

Prior to 2020, a "conduit trust" provision was commonly used in a trust to achieve a life expectancy payout with respect to the conduit beneficiary of the trust. A conduit trust provision requires the Trustee to pay any and all distributions taken from the retirement plan outright to the beneficiary, including but not limited to, required minimum distributions. The Trustee does not have authority to retain retirement plan distributions in trust and distribute the funds to the beneficiary at a later point in time.

The SECURE Act eliminated life expectancy payouts for most non-spouse beneficiaries with respect to retirement plan distributions, which was often referred to as the "lifetime stretch." The "lifetime stretch" previously allowed a child (and other beneficiaries) of a plan participant to defer taxes on the retirement plan distributions by stretching the required minimum distributions over the course of the child's life expectancy, which could be a very long time. The SECURE Act put a stop to this tax deferral technique, such that now most non-spouse beneficiaries must withdraw the full balance of the retirement plan by December 31 of the tenth year following the death of the retirement plan account owner.

Trusts that still contain conduit trust provisions may result in unintended consequences. If the trust is the beneficiary of the retirement account, for most non-spouse beneficiaries, the full balance of the retirement plan may have to be distributed outright to the trust beneficiary in accordance with the 10-year payout rule, which could run counter to your estate planning goals if you expected that asset to be largely protected in trust for the beneficiary's lifetime.

For example, if you have an estate plan that holds a child's inheritance in a lifetime discretionary trust to protect against the child's creditor and divorce risk, the conduit trust provision may cause the entirety of the retirement plan to be paid directly to the child by the end of the tenth year following your death, and once the funds are in the hands of the child, they will be exposed to the child's creditors or his or her divorcing spouse.

Your trust may need to be updated with "accumulation trust" provisions, which would allow retirement plan distributions to be retained by the Trustees in trust, subject to the Trustee's discretion as to when the beneficiary receives the funds or you may not want to name your trust as the beneficiary of your retirement accounts if creditor protection is not a concern for your beneficiaries.

We recommend consulting with your Bowditch trusts and estates attorney to ensure that the retirement plan provisions of your trust are still in line with your planning goals.