MARK A. LUSCOMBE, J.D., LL.M, CPA, is a Principal Analyst at Wolters Kluwer Tax & Accounting.

Tax Trends

100 Years of TAXES The Tax Magazine and 25 Years of the Tax Trends Column

By Mark A. Luscombe

My first column in TAXES actually appeared in the October 1995 issue, so I could claim a 27-year anniversary. The column initially, however, was titled "*Tax Tacks*," combining my interest in sailing with my interest in taxes. Perhaps because there were not enough tax professionals who were also sailors, it was suggested that the column title be changed to "*Tax Trends*," with the first Tax Trends column appearing in the January 1998 issue and continuing ever since, now into its 25th year. That would make this, I believe, my 332nd column, although as I recall there might have been a year or two when there were so many lengthy papers for the University of Chicago Tax Conference issue that I was given a one-month reprieve on my column in order to include as many papers as possible.

The first *Tax Tacks* column was titled "*The Transformation of Entity Classification*." I was apparently not shy at that point about taking on large topics in a 1000-word column. Looking back at older issues of TAXES in 1995, I can see that a number of tax professionals are still active with older publishing histories than mine, including Terry Cuff, Shelly Banoff, Chuck Levun, and Dick Lipton. The first *Tax Trends* column in January 1998 was titled "*1998 Estate Plan Check-up*," highlighting the changes made by The Taxpayer Relief Act of 1997. It was good that the title of TAXES had long since been changed from THE NATIONAL INCOME TAX MAGAZINE, reflecting the coverage of a broader range of tax topics beyond just federal income taxes.

As I recall, the column over the years that received the most comment was one analyzing why every piece of tax legislation enacted by Congress over several years included a provision on the taxation of bows, arrows, points, shafts, and maybe even quivers. I do not believe that many tax professionals were really interested in how such products were being taxed but rather interested in what an analysis of those provisions over a period of years said about the legislative process in Congress.

One of the main difficulties in writing a monthly column is coming up with a good topic. For some years, of course, the topics have been plentiful with an active Congress, Internal Revenue Service (IRS), and courts. With the Tax Cuts and Jobs Act at the end of 2017 and then the coronavirus disease (COVID)-related provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act and the American Rescue Plan Act, and omnibus budget bills as well, tax changes have been fairly active for several years. It is starting off a little quieter this year. The compromise infrastructure legislation enacted in November 2021 contained just a handful of tax provisions. The tax provisions were put off to the Build Back Better bill, which is still struggling to find a structure that can make it through Congress. Then, the omnibus spending bill left out almost all of the tax provisions, including letting regularly expiring tax provisions that had expired at the end of 2021 remain expired and not extending the expanded individuals tax breaks from the American Rescue Plan Act for the Child Tax Credit, the Earned Income Tax Credit, and the Child and Dependent Care Tax Credit that had also expired at the end of 2021.

Probably the most interesting development over the past few months was the issuance by the IRS of proposed regulations on the changes to required minimum distributions (RMDs) made by the Setting Every Community Up for Retirement Enhancement (SECURE) Act, enacted at the end of 2019. Putting aside the fact that the proposed regulations came out over two years after the changes were enacted and became effective, the proposed regulations do provide helpful guidance in a number of areas: who qualifies for the extended required beginning date for RMDs; who is an eligible designated beneficiary who may still qualify to take RMDs over their own life expectancy rather than over 10 years; defining the date of a child achieving majority age; providing a definition of disability and required documentation; discussing the treatment of a trust as a beneficiary; and other miscellaneous clarifications.

The issue that surprised most commentators was the requirement in the proposed regulations that, if RMDs had commenced to the participant in the retirement plan before the participant's death, the beneficiaries, other than eligible designated beneficiaries, were required to take RMDs in years one through nine rather than being able to wait and take the entire distribution in year 10. The IRS appeared to be relying on the provision in Code Sec. 401(a)(9)(B)(i) that provides, when the participant reaches his or her required beginning date, the distributions after the participant's death must be made at least as rapidly as under the method of distributions being used as of the date of the participant's death.

However, many commentators felt that, when Congress moved to the 10-year distribution requirement for beneficiaries and away from distributions based on the age of the beneficiary, Congress had intended to simplify the distribution rules and allow the distributions to be made at any time during the 10-year period, as was the case with the 5-year distribution rule under prior law. Also, the IRS seemed to support this view when it had removed references to "at least as rapidly" test in Code Sec. 401(a)(9)(B)(i) from the draft of Publication 590-B. This leaves beneficiaries somewhat uncertain as to whether they are required to make RMDs for 2022 and what to do about RMDs that they may have failed to take in 2021. The IRS states that the proposed regulation may be relied upon starting on January 1, 2022. Perhaps, however, beneficiaries who would prefer to defer RMDs as long as possible should hold off until close to the end of 2022 to see if the IRS might change its position in final regulations in response to comments it receives or provide a waiver of significant penalties for beneficiaries confused by the conflicting guidance.

It looks like Congress may not yet be done with retroactive enactment of expired provisions, although it seems that it is always more difficult to achieve the compromises needed to enact tax legislation in the election years as November approaches.