KILPATRICK TOWNSEND

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IRS to Allow Remote Notarizations for Retirement Plan Withdrawals on a Permanent Basis

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As part of its response to the COVID-19 pandemic, the IRS issued temporary relief that allowed for remote notarizations of spousal consents and other participant elections for retirement plan withdrawals under certain circumstances. This temporary relief was set to expire on December 31, 2022, but on December 30, 2022, the IRS published proposed regulations that would make this relief permanent. The preamble to the proposed regulations provides that taxpayers may rely on the rules before the applicability date of final regulations, so the proposed regulations in effect extend the temporary relief indefinitely.

The proposed regulations are generally consistent with the COVID-19 temporary relief described in our prior blog post: here. However, there are some modifications and clarifications of the temporary relief as follows:

- Plans that accept remote notarizations must also accept notarizations witnessed in the physical presence of a notary.
- For spousal consents witnessed remotely by a plan representative (rather than a notary public), the plan representative must retain a recording of the audio-video conference in accordance with IRS recordkeeping rules.
- Remote notarizations are subject to the IRS's general rules for electronic elections, including that the individual has the opportunity to review, confirm, modify, or rescind the election before it becomes effective and receives a confirmation of the election within a reasonable time.

Written or electronic comments on the proposed regulations must be received by March 30, 2023, and a telephonic public hearing has been scheduled for April 7, 2023.