

Relief From Required Retirement Distributions

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The tax code requires that “minimum distributions” be taken from qualified defined contribution retirement plans, IRAs and annuities. In general, a required minimum distribution (RMD) is the smallest amount that must be withdrawn each year by the plan participant or IRA owner.

A participant in a retirement plan who does not own more than 5% of the company must begin withdrawals by (a) April 1 of the calendar year following the calendar year in which the participant reaches the age of 70½; or (b) April 1 of the year following the year in which the individual retires, whichever comes last. If a participant owns more than 5% of the company, distributions must begin by April 1 of the calendar year following the year the owner reached 70½, even though he or she is not yet retired. In other words, most owners are forced to start taking distributions from a retirement plan before they have retired, whether they need the money to live on or not. In the case of an IRA, the owner must begin to withdraw RMDs by April 1 in the calendar year following the calendar year in which the owner turns 70½.

The significant decline in the value of stocks and mutual funds made 2008 a tough year for many retirement plans and their participants. The economic downturn forced participants and owners of IRAs who had invested heavily in the stock market and/or in mutual funds to sell stock or mutual fund shares at a loss in order to fund the RMDs for 2008. That action was necessary because the account balances on December 31, 2007 were higher than they were on December 31, 2008 and the RMD is based on the higher December 31, 2007 value. Not only were they forced to liquidate at lower values, but they were taking out more than they would have if the tax code had allowed them to utilize the lower December 31, 2008 values.

In response to this financial hardship, Congress in 2008 waived the requirement that RMDs be made for 2009. It's important to note that the waiver is only for 2009. The IRS recently issued Notice 2009-82 in an effort to provide guidance and to clarify the rules governing this one-time exemption from the mandatory withdrawal rules.

Plan Amendments

This Notice provides two sample plan amendments that both individual plan and pre-approved plan sponsors can adopt or use in drafting individualized plan amendments. They essentially allow employers a choice between making RMDs or not in 2009. The first provides that the plan default in the absence of a participant's or beneficiary's election will be to pay out distributions that include 2009 RMDs, while the second affords the employer the option of not paying distributions. In simple terms, the first sample amendment enables the participant or beneficiary to elect to stop receiving the distribution while in the second scenario, those same people can choose to collect the distribution.

Plan sponsors are required to adopt one of the two sample amendments no later than the last day of the first plan year beginning on or after January 1, 2011 (*January 1, 2012 for governmental plans*). Except as outlined below with respect to certain transitional relief, the amendment must reflect the operation of the plan to either cease or continue to distribute the 2009 RMDs in the absence of a participant's or beneficiary's choice. The amendment must be adopted in a timely fashion by a written document signed and dated by the employer (*including an adopting employer of a pre-approved plan*).

Planning Tip: Although plan sponsors have until 2011 to adopt one of the sample amendments, beginning December 1, 2009, a qualified retirement plan must operate in compliance with the amendment it ultimately adopts. That means now is the time plan sponsors must decide and implement their decision on how they will deal with RMDs for 2009. The adoption of the written plan amendment can wait.

Transitional Relief

IRS Notice 2009-82 recognizes that Congress acted late in 2008 and, accordingly, many plan administrators did not have sufficient time to modify administrative procedures to address the waiver of RMDs for 2009. The IRS will not consider a plan to have failed to operate in accordance with its terms if during the period commencing on January 1, 2009 and terminating on November 30, 2009:

(a) distributions that equal the 2009 RMDs or that represent one or more payments in a series of substantially equal distributions (*that include the 2009 RMDs*) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of participant and the participant's designated beneficiary, or for a period of at least 10 years were or were not paid,

(b) participants and beneficiaries were not given the option of receiving or not receiving distributions that include 2009 RMDs

OR

(c) a direct rollover option was or was not offered for 2009 RMDs or for other amounts that can be rolled over pursuant to the rollover relief described below.

Rollover relief: For plan participants and IRA owners who have already received 2009 RMDs and for whom the 60-day rollover period has expired, Notice 2009-82 extends the period to roll over such distributions until November 30, 2009. Be aware, however, that due to the "one-roll-over-per-year" rule - which Congress did not modify - no more than one distribution from an IRA in 2009 will be eligible for this rollover relief.