

IRS Issues Guidance and Model Amendments for Suspending 2009 Minimum Required Distributions

The IRS has released Notice 2009-82, which provides much-needed guidance for employers regarding the waiver of required minimum distributions (RMDs) from IRAs and defined contribution plans for 2009, including two model amendments that employers may use to update their plans.

The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) provides that 2009 RMDs are not required from IRAs or defined contribution plans such as 401(k) or 403(b) plans. Although the new law is beneficial for retirees who wish to continue deferring taxation, it left many questions unanswered. The IRS issued the Notice to assist employers in facilitating the 2009 suspension of RMDs and to provide guidance to taxpayers regarding rollovers of distributions that include RMDs for 2009.

Transitional Relief Regarding Rollovers and Plan Operation

Rollover Relief

The Notice provides the following rollover relief:

- > Clarification that both distributions that would have been 2009 RMDs if not for the suspension (2009 RMDs) and certain installment payments that include 2009 RMDs (which the Notice refers to as "Extended RMDs"), which could normally not be rolled over, are eligible for tax-free rollover, so long as the requirements applicable to rollover distributions are otherwise satisfied.
- > An extension of the normal 60-day rollover period for 2009 RMDs and Extended RMDs, which will end no earlier than November 30, 2009.

Operational Relief

The Notice also provides a transitional period, ending on November 30, 2009, during which the IRS will not treat a plan as not having been operated in accordance with its terms as a result of:

- > Paying or not paying 2009 RMDs or Extended RMDs;
- > Not having offered participants a choice of whether to take 2009 RMDs or Extended RMDs; or
- > Offering or not offering participants the opportunity to roll over 2009 RMDs or Extended RMDs.

Model Plan Amendments

The Notice provides two model amendments that may be used by any defined contribution plan to reflect the 2009 RMD suspension. Both allow participants and beneficiaries to elect whether to receive 2009 RMDs and Extended RMDs, but the first states that in the absence of an election, such payments will be made, while the second “defaults” to non-payment. Additionally:

- > Both amendments may be used by employers maintaining either individually designed plans or prototype or volume submitter plans, and the adoption of one of the amendments will not cause a prototype or volume submitter plan to lose its status as such.
- > Both amendments also allow employers to choose whether to permit rollovers of 2009 RMDs and extended RMDs, or to limit rollovers to 2009 RMDs that are paid along with additional amounts that are otherwise eligible for rollover.

Whether one of the model amendments or an individually designed amendment is used to update a plan, the amendment must generally be executed by the last day of the 2011 plan year.

It is important to note that WRERA only suspends the RMD requirement for 2009 RMDs, not RMDs from 2008 or prior years that are merely paid in 2009. Also, the requirement to pay 2009 RMDs continues for defined benefit pension plans and 457(b) plans sponsored by non-governmental employers.

Employee Benefits & Executive Compensation Practice Group

If you have any questions or would like assistance in drafting the appropriate amendment for your plan, please contact any member of our Employee Benefits and Executive Compensation Practice Group listed below.

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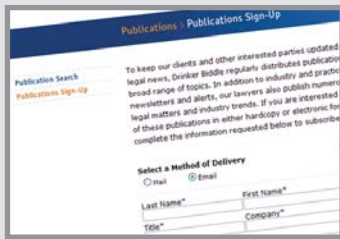
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