

Worker, Retiree and Employer Recovery Act of 2008

On December 23, 2008, President Bush signed into law the Worker, Retiree and Employer Recovery Act of 2008 (the Act).

In general, the Act provides certain pension funding relief including protections for employee benefits and makes technical corrections to the Pension Protection Act of 2006.

One of the most welcomed aspects of this legislation suspends required minimum distributions (RMDs) for 2009. Those age 70½ and over and IRA beneficiaries are NOT required to take distributions from:

- Traditional IRAs
- SEP or SIMPLE IRAs
- Inherited/Beneficiary Traditional or Roth IRAs
- Qualified plans
- 403(b) plans
- 457 (plans)

If a participant in one of the above plans turned 70½ in 2008, his or her required beginning date (RBD) is April 1, 2009. The Act, however, does not affect this 2008 RMD. Since this first required minimum distribution is for 2008, it should be withdrawn by the RBD of April 1, 2009. There will be no further distribution required in 2009, since the RMD for 2009 has been suspended. The next RMD will be for 2010 and should be taken no later than December 31, 2010. The 2010 RMD will be calculated from the December 31, 2009, retirement account balance.

If a participant attains the age of 70½ during 2009, his or her required beginning date (RBD) is April 1, 2010. While there is no requirement to take a distribution for 2009, the individual will need to take the 2010 RMD by December 31, 2010, calculated from the December 31, 2009, retirement account balance.

For those who are current Inherited/Beneficiary IRA accountholders, the Act will also allow them to suspend any required minimum distribution (RMD) for 2009. Heirs who have embraced a Stretch IRA strategy for their inheritances will be affected by this opportunity.

One option for beneficiaries who have inherited retirement accounts from individuals who died before reaching their required beginning date is the five-year rule. The five-year rule states that the inherited account must be totally distributed by December 31st of the fifth year after the year of death. If this option has been chosen by an heir, the Act provides that the calendar year 2009 is disregarded in determining when the five-year period ends.

For example, Midge died during 2007 at the age of 68 — prior to her required beginning date. Her son, Bob, inherited the asset and chose the five-year rule for his distribution method. Full distribution of this account would then be required by December 31, 2012. However, under the Act, Bob will have until December 31, 2013, to fully distribute this account.

For those who might inherit retirement plans from individuals who die in 2009, the Act will also offer some relief. If an individual dies after his or her required beginning date, under IRS rules, the required minimum distribution (RMD) must be satisfied for that year. If the deceased person had not withdrawn that amount prior to his or her death, the heirs would be required to take the needed distribution. However, under the Act, the beneficiary will not be required to fulfill the RMD in 2009. Non-spouse beneficiaries, trusts and estate beneficiaries will need to begin taking distributions from any Inherited/Beneficiary IRA no later than December 31, 2010.

For example, Angela dies on March 20, 2009. She is 74 years of age and has designated her daughter, Anna, as her primary beneficiary. In reviewing the IRA account, we find that Angela did not take her \$2,500 RMD prior to her death. Anna will establish an Inherited IRA, but will not be required to take any distribution until December 31, 2010.

While the Act suspends the required mandatory distribution rules in 2009, those who wish to distribute funds from their IRA accounts may certainly do so. Reporting of such distributions will be issued on a 1099R at year end and any applicable taxes and penalties will apply.

Another aspect of this legislation affecting RMDs is as follows. In prior years, a required minimum distribution could not be rolled over to another retirement account. This rule was particularly important for older investors choosing to transfer assets from an ex-employer's qualified retirement plan to an IRA. Under the Act, this rule is suspended for 2009, and it will not be necessary for RMDs to be taken from rollover accounts.

THESE ARE SEVERAL TECHNICAL CORRECTIONS THAT ARE PART OF THE WORKERS, RETIREES AND EMPLOYER RECOVERY ACT OF 2008:

- After December 31, 2009, a non-spouse beneficiary must be permitted a direct trustee to trustee transfer from an employer's plan to an Inherited/Beneficiary IRA.
- Rollovers from an employer's Roth account (i.e. Roth 401(k), etc.) to a Roth IRA are not subject to current conversion eligibility rules; therefore, the \$100,000 AGI limit does not apply. However, conversions from non-Roth employer accounts, rollover conversions and Traditional IRA to Roth IRA conversions are subject to the \$100,000 AGI limit until 2010. The taxable portion of such a conversion is includible in the payee's gross income in the year of the conversion.
- Qualified airline employees or former employees who were participants in a defined benefit pension plan that was terminated or frozen may roll over amounts received in the airline's bankruptcy claim to a Roth IRA. For this "conversion" to a Roth IRA, normal Roth conversion eligibility restrictions do not apply. Any taxable portion of these payments which is rolled over to a Roth IRA is subject to income tax.

While our firm is pleased to provide you with this interpretation of the Act, please contact your tax and/or legal advisors with any questions as our firm is not a tax or legal advisor.

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