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Legal ALERT!

New Law Suspends Required Minimum Distributions from Qualified Plans and IRAs for 2009; No Relief for 2008.

On December 23, 2008, the President signed into law a bill which, among other things, suspends "required minimum distributions" ("RMDs") from qualified retirement plans and IRAs for 2009. The RMD relief also applies to holders of tax sheltered annuity contracts described in Code Section 403(b), and participants in certain governmental plans covered by Code Section 457. Worker, Retiree, and Employer Recovery Act of 2008 (H.R. 7327) (referred to herein as the "Act").

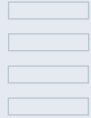
Background. Under the RMD rules, participants in qualified plans and IRA account owners are generally required to begin taking distributions no later than April 1 of the year after they attain age 70-1/2. However, for a participant in a qualified plan who is not a 5 percent owner of the employer, distributions may be postponed until after the individual retires. For any plan in which the benefit is based on an account balance (such as 401(k) plans, IRAs and tax sheltered annuities funded through custodial accounts), the RMD for each year generally is determined by dividing the participant's or owner's account balance by a number derived from a uniform life expectancy table based on the participant's age. Failure to make an RMD triggers a 50% excise tax, payable by the individual or the individual's beneficiary.

Special rules apply upon the death of a participant or account owner. If the participant or owner dies on or after his required beginning date, the RMD is determined by dividing the account balance by a distribution period equal to the remaining years of the beneficiary's life expectancy. If there is no designated beneficiary, the distribution period equals the remaining years of the deceased participant's or account owner's single life expectancy, using the age of the deceased individual in the year of death.

If the participant or account owner dies before his required beginning date, there are two alternative methods for satisfying the after-death RMD rules. Under the life expectancy rule, the RMD is determined by dividing the account balance by the beneficiary's life expectancy. This rule is available only if the participant designated an individual (i.e. not the individual's estate or a charity) the beneficiary of the account. Under the five-year rule, the individual's entire account must be distributed no later than five years after the individual's death. However, if the designated beneficiary of the account is the individual's surviving spouse, the surviving spouse may elect to calculate RMDs as though he or she is the IRA owner, rather than a beneficiary.

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Roth IRAs are not subject to the RMD rules during the IRA owner's lifetime. However, Roth IRAs are subject to the post-death minimum distribution rules that apply to qualified plans and traditional IRAs. Because a deceased owner of a Roth IRA is treated as having died before his or her required beginning date, the distribution rules applicable to participants who die after their required beginning date never apply to Roth IRAs. Thus, only the life expectancy rule and the five-year rule apply.

New Law. The Act provides a one year suspension of the RMD rules for 2009. Specifically, no minimum distribution is required for calendar year 2009 from:

- defined contribution plans (e.g. 401(k) plans and profit sharing plans);
- tax sheltered annuities;
- Code Sec. 457(b) eligible deferred compensation plans, maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and
- individual retirement accounts.

Under the Act, the next RMD will be for calendar year 2010. This relief applies to life-time distributions to participants and account owners and after-death distributions to beneficiaries. For purposes of applying the RMD rules to calendar years to 2010 and beyond, an individual's required beginning date will be determined without regard to one-year suspension of the RMD. If the five-year rule is used for determining the RMD for an individual who dies before his required beginning date, then the five-year period under that rule is determined without regard to calendar year 2009. For example, for an account with respect to an individual who died in 2007, the five-year period ends in 2013, instead of 2012.

No RMD Relief for 2008. On December 17, Kevin I. Fromer, Assistant Secretary of the Treasury for Legislative Affairs, confirmed in a letter to Representative George Miller that the IRS does not interpret the RMD relief bill as providing relief for years earlier than 2009. Thus, Mr. Fromer advised that "all individuals who are subject to required minimum distributions for 2008 should take their distribution under the existing rules and, as a result of relief provided by Congress, they will be entitled to a complete waiver of the requirement to take any distributions for 2009." ■

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