

October 22, 2009

TCRS 2009-09: Internal Revenue Service Guidance on 2009 Required Minimum Distributions

In Notice 2009-82, the Internal Revenue Service (IRS) provides guidance relating to the waiver of the 2009 required minimum distributions (2009 RMDs) under the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). This guidance affects 2009 RMDs from plans described in Internal Revenue Code (IRC) sections 401(a), 403(a), 403(b), and governmental 457(b), as well as IRAs under IRC section 408(b).

Background

WRERA, enacted into law in December, 2008, revised the mandatory minimum distribution rules to not require 2009 RMDs to be made under certain defined contribution retirement plans and IRAs. On February 2, 2009, the IRS published Notice 2009-9 which provided guidance to financial institutions on the reporting requirements for 2009 RMDs (**check here for a copy of TCRS 2009-01**).

The IRS received a number of comments indicating that plan sponsors were uncertain of the impact of the waiver of 2009 RMDs on their plan document and on the operation of their plan. Notice 2009-82 provides guidance on these issues and others related to the waiver of 2009 RMDs.

Specifically, Notice 2009-82 provides:

- sample plan amendments plan sponsors can adopt to give participants and beneficiaries the choice of whether to continue or stop (or to receive or not receive) 2009 RMDs and certain related payments. The sample amendments also allow plan sponsors to offer rollover options for 2009 RMDs and certain distributions that include 2009 RMDs.
- transition relief through November 30, 2009, for plans that were not operated in accordance with their terms with respect to waived 2009 RMDs and certain related payments;
- rollover relief with respect to waived 2009 RMDs and certain related payments, including the extension of the 60-day rollover period to November 30, 2009, for certain distributions; and
- Q & As addressing other issues relating to 2009 RMDs under WRERA.

Plan Amendments

Two sample plan amendments are included in the Notice. Both amendments permit participants and beneficiaries to receive or not receive 2009 RMDs and certain related payments. Both amendments also permit a direct rollover option of either (1) the 2009 RMD amounts (including payments that are made over the life or life expectancy or over a 10-year period that includes the 2009 RMDs, referred to in the Notice as "Extended RMDs") or (2) the 2009 RMD amounts, but only if they include an additional amount that is an eligible rollover without regard to the waiver of 2009 RMDs by WRERA.

The default in sample plan amendment #1 is distributions that include 2009 RMDs will be made in the absence of an election by the participant or beneficiary to not receive them.

The default in sample plan amendment #2 is distributions that include 2009 RMDs will not be made in the absence of an election by the participant or beneficiary to receive them.

With respect to the rollover options, the default in both sample amendments is to not allow a direct rollover of the 2009 RMDs (and amounts that could be rolled over solely due to the transition relief under this Notice). Pre-WRERA eligible rollover distributions are unaffected and may still be rolled over.

The Notice provides that plan sponsors may modify the sample amendment to conform to their plans' terms and administrative procedures, and that the use of the sample amendment (as so modified) will not affect the pre-approved status of a master and prototype or volume submitter plan.

Although plan amendments are not required until the last day of the first plan year beginning on and after January 1, 2011 (January 1, 2012 for governmental plans), operational compliance is required before that date to reflect the approach plan sponsors have taken with regard to distributions that include 2009 RMDs.

The Notice requires that a plan sponsor's adoption of the sample amendment must be evidenced by a written document that is signed and dated by the plan sponsor. However, the Center has been made aware that the IRS will not require a plan sponsor to sign the amendment if:

- the plan sponsor has adopted an IRS pre-approved plan which allows the document provider to amend on behalf of the plan sponsor,
- the document provider invokes its right to amend on behalf of all adopting plan sponsors, and
- the amendment does not contain any elections that may be selected by the plan sponsor.

Transitional Relief

Notice 2009-82 provides operational relief to plan sponsors through November 30, 2009 for failure to follow the terms of their plan with respect to the waiver of the 2009 RMDs. But, on or before that date, plan sponsors should decide on the approach they want to take with respect to the 2009 RMDs and Extended RMDs. The Notice provides that there is no relief for other payments, for example, installment payments over a period less than 10 years.

The Notice also provides rollover relief by extending the 60-day period for indirect rollovers. Accordingly, participants who have received distributions of a 2009 RMD amount (including Extended RMDs) have until the later of November 30, 2009 or 60 days after the date of the distribution to roll over the distribution to another qualified plan, IRA, or, if the plan allows, back to the same plan from which the distribution was received.

Q & A

The following are some of the issues addressed in the Q&A section of the Notice:

- IRAs are not required to be amended for the 2009 RMD waiver until further guidance is issued
- Distributions of 2009 RMDs may be rolled back to the same plan
- A 2009 RMD amount distributed from a plan in 2009 is not subject to 20-percent withholding
- The first distributions in 2009 are RMDs from prior years not yet distributed, followed by 2009 RMDs
- If a plan permits a participant or beneficiary to elect the 5-year rule or the life expectancy rule for RMDs and the deadline for making that election is during 2009, the election deadline is extended for an additional year
- If the 5-year rule applies to a distribution from a plan that allows direct rollovers by nonspouse beneficiaries, and a participant dies during 2008, the nonspouse beneficiary has until the end of 2010 to make a direct rollover and use the life expectancy rule
- Spousal consent is generally not required to suspend distributions that include 2009 RMDs and restart the distributions in 2010
- A 2009 RMD that is made in 2009 is not treated as an eligible rollover distribution for withholding purposes. Withholding for a 2009 RMD that is paid in 2010 is determined without regard to the waiver of the 2009 RMD under WRERA

- Payments (that are part of a series of equal periodic payments under the RMD method) designed to satisfy the IRC section 72(t)(2)(A)(iv) exception to the 10 percent additional tax under IRC section 72(t), if stopped during 2009 (other than because of death or disability), would subject all the payments (before and after 2009) to the recapture tax under IRC section 72(t)(4). This is because the waiver of the 2009 RMD under WRERA does not apply to these payments.

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