IRS Grants Relief for Taxpayers to Roll Over 2009 Required Minimum Distributions

Legal Alert

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The Worker, Retiree and Employer Recovery Act of 2008 (the "Act") permitted taxpayers to defer distribution of any required minimum distribution ("RMD") from an IRA or a qualified defined contribution plan (such as a profit sharing or 401(k) plan) otherwise payable in 2009 (other than an RMD to a taxpayer who attained 70½ or retired in 2008 that was deferred until April 1, 2009). The intent of this provision was to prevent forced liquidation of plan investments in order to take RMDs while market values were depressed due to the economic downturn. The Act does not permit waiver of 2009 RMDs from a defined benefit pension plan, since the RMD is fixed under the plan's benefit formula and will not be adversely affected by market fluctuations.

The IRS recently issued Notice 2009-82 (the "Notice") to clarify certain aspects of the RMD provisions of the Act, to provide sample plan amendments that can be adopted by plan sponsors to implement the waiver rules, and to grant transitional relief to taxpayers who may have received an RMD in 2009 without being given the opportunity to waive the distribution.

Generally, the Internal Revenue Code requires a participant in a qualified retirement plan to receive RMDs each year commencing with the participant's retirement or attainment of age 70½ (whichever is later). There is a grace period that permits the participant to defer the first RMD until the following April 1st (although he would then have to receive two RMDs in that year). In the case of IRAs and 5% owners of the employer that sponsors a qualified plan, the RMDs must begin after attainment of age 70½, even if the individual has not retired. In addition, there are special RMD rules when the participant or IRA owner dies before his entire account has been distributed to him. If the taxpayer does not receive the full amount of his RMD in any year, he is subject to an excise tax equal to 50% of the amount that was not distributed to him.

Arguably the most significant provision of the Notice is the transitional relief granted to taxpayers who already received their 2009 RMDs. Since RMDs are not required for 2009, the Notice provides that a distribution that was made as an RMD in 2009 would be an eligible rollover distribution. Although normally a taxpayer has 60 days to roll over an eligible distribution to an IRA or qualified retirement plan, the Notice gives a taxpayer who received an RMD in 2009 until November 30, 2009 to roll it over, if the RMD was received on or before October 1, 2009. In addition, the RMD may even be rolled back into the plan from which it was received, if the plan is amended to allow for these rollovers.

In the case of plans that did not notify participants of their right to waive the 2009 RMD or to roll over an RMD if already paid, the Notice also provides transitional relief until November 30th for plan sponsors to notify participants of these rights.

The Act allows plan sponsors until the last day of the first plan year beginning on or after January 1, 2011 to adopt amendments containing the 2009 waiver provisions. The sample forms of amendment included with the Notice provide alternative default provisions for the 2009 RMDs; *i.e.*, either that the 2009 RMD will be paid unless the participant affirmatively elects to waive it or that the 2009 RMD will not be paid unless the participant elects to receive it.

For more information or if you have any questions, please contact Allen P. Fineberg, Marc R. Garber or any member of the Flaster Greenberg Taxation Department.

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