

Required Minimum Distributions Are Suspended for Calendar Year 2009

Sec. 201 of the Worker, Retiree and Employer Recovery Act of 2008 enacts a temporary waiver of Required Minimum Distribution rules for calendar year 2009 for IRAs and employer-provided qualified retirement plans that are defined contribution plans (401(k), 403(b), 457(b) plans). This Act was passed by the House of Representatives on December 10 and by the Senate on December 11 and the Administration has indicated that the President is expected to sign the bill.

The “economic crisis” section of the Worker, Retiree and Employer Recovery Act of 2008 contains, in addition to the RMD suspension, several provisions providing relief for defined benefit plans. One “economic crisis” legislative proposal that did not make it into this Act is suspension of the 10% penalty on hardship withdrawals from retirement accounts in 2009 (see our eBulletins of November 3 and November 24). This Act also contains technical corrections and amendments to the Pension Protection Act of 2006; we will cover the entire Act in a separate bulletin.

Technical Explanation of the RMD Suspension (by the Congressional Joint Committee on Taxation)

“Under the provision, no minimum distribution is required for calendar year 2009 from individual retirement plans and employer-provided qualified retirement plans that are defined contribution plans (within the meaning of section 414(i)). Thus any annual minimum distribution for 2009 from these plans required under current law, otherwise determined by distribution for 2009 from these plans required under current law, is not required to be made. The next required minimum distribution would be for calendar year 2010. This relief applies to life-time distributions to employees and after-death distributions to beneficiaries.

“In the case of an individual whose required beginning date is April 1, 2010 (e.g., the individual attained age 70 ½ in 2009), the first year for which a minimum distribution is required under current law is 2009. Under the provision, no distribution is required for 2009 and thus, no distribution will be required to be made by April 1, 2010. However, the provision does not change the individual’s required beginning date for purposes of determining the required minimum distribution for calendar years after 2009. Thus, for an individual whose required beginning date is April 1, 2010, the required minimum distribution for 2010 will be required to be made no later than the last day of calendar year 2010. If the individual dies on or after April 1, 2010, the required minimum distribution for the individual’s beneficiary will be determined using the rule for death on or after the individual’s required beginning date.

“If the five year rule applies to an account with respect to any decedent, under the provision, the five year period is determined without regard to calendar year 2009. Thus, for example, for an account with respect to an individual who dies in 2007, under the provision, the five year period ends in 2013 instead of 2012.

“If all or a portion of a distribution during 2009 is an eligible rollover distribution because it is no longer a required minimum distribution under this provision, the distribution shall not be treated as an eligible rollover distribution for purposes of the direct rollover requirement and notice and written explanation of the direct rollover requirement, as well as the mandatory 20-percent income tax withholding for eligible rollover distributions, to the extent the distribution would have been a required minimum distribution for 2009 absent this provision. Thus, for example, if an employer-provided qualified retirement plan distributes an amount to an individual during 2009 that is an eligible rollover distribution but would have been a required minimum distribution for 2009, the plan is permitted but not required to offer the employee a direct rollover of that amount and provide the employee with a written explanation of the requirement. If the employee receives the distribution, the distribution is not subject to mandatory 20-percent income tax withholding, and the employee

can roll over the distribution by contributing it to an eligible retirement plan within 60 days of the distribution.”

Complete Text of Sec. 201 of the Act

SEC. 201. TEMPORARY WAIVER OF REQUIRED MINIMUM DISTRIBUTION RULES FOR CERTAIN RETIREMENT PLANS AND ACCOUNTS.

(a) In General- Section 401(a)(9) of the Internal Revenue Code of 1986 (relating to required distributions) is amended by adding at the end the following new subparagraph:

“(H) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION-

“(i) IN GENERAL- The requirements of this paragraph shall not apply for calendar year 2009 to--

“(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

“(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

“(III) an individual retirement plan.

“(ii) SPECIAL RULES REGARDING WAIVER PERIOD- For purposes of this paragraph--

“(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2009, and

“(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2009.’.

(b) Eligible Rollover Distributions- Section 402(c)(4) of the Internal Revenue Code of 1986 (defining eligible rollover distribution) is amended by adding at the end the following new flush sentence:

‘If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.’.

(c) Effective Dates-

(1) IN GENERAL- The amendments made by this section shall apply for calendar years beginning after December 31, 2008.

(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS-

(A) IN GENERAL- If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES-

(i) IN GENERAL- This paragraph shall apply to any amendment to any pension plan or annuity contract which--

(I) is made pursuant to the amendments made by this section, and

(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting ‘2012’ for ‘2011’.

(ii) CONDITIONS- This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2009, the plan or contract is operated as if such plan or contract amendment were in effect.