E-Flash Update

IRS Issues Guidance for Relief from 2009 Required Minimum Distributions

The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") eliminates post-age 70½ required minimum distributions ("RMDs") under qualified defined contribution plans and IRAs for 2009 (including distributions required to be made by April 1, 2010 for individuals who reach age 70½ during 2009). In general, defined contribution plans are permitted but not required to suspend RMDs for 2009, or otherwise to disregard 2009 for purposes of applying RMD rules. Plans may also give individual participants and beneficiaries a choice to suspend or not to suspend distributions for the year. In addition, plans are permitted but not required to allow direct rollovers of 2009 distributions that would otherwise have been RMDs, but those distributions are not subject to rollover notice requirements or 20% mandatory withholding if not rolled over.

Because of the overall complexity of RMD rules and the apparent range of options provided to plans and participants by the WRERA relief, there has been confusion among plan sponsors concerning its proper implementation. The IRS has now published its first meaningful guidance for sponsors and participants. Much of the information in Notice 2009-82 reiterates or amplifies statutory provisions. Here are some of the highlights.

- If plan amendments are necessary to accommodate the sponsor's choices for implementation, they must be adopted by the end of the 2011 plan year. When adopted, the amendments must accurately reflect the plan's operation either to cease or to continue 2009 RMDs, or to afford participants and beneficiaries a choice. The Notice includes two versions of sample plan amendments covering different implementation choices. The sample amendments are in pre-approved plan (e.g., prototype) format, so they would require substantial modification for use by individually designed plans.

- The Notice provides generous transition relief, for distributions made or not made between January 1, 2009 and November 30, 2009 that would otherwise have been RMDs, with respect to compliance with current plan provisions and availability of direct rollovers.

- 2009 distributions that would otherwise have been RMDs may be rolled over to an IRA or another qualified plan by November 30, 2009, even if the rollover is made more than 60 days after the distribution was received. For distributions from IRAs, however, the IRA limit of one rollover per year still applies.

- If a plan permits a participant to choose whether to suspend and restart RMDs for 2009, the participant may do so without spousal consent if there is no new annuity starting date (e.g., no new election of distribution options) when distributions restart. If there is a new annuity starting date (e.g., a new election of distribution options) when RMDs restart, spousal consent may be required in order for a participant to suspend and restart RMDs.

- For purposes of identifying RMDs for 2009, the first distributions in 2009 are any RMDs from prior years not yet distributed, followed by RMDs for 2009.

- The 10% additional tax on early distributions does not apply if distributions are made in a series of substantially equal periodic payments. For purposes of determining whether requirements for this exception are met, previous IRS guidance permits use of the "RMD method." Because these early distributions determined under the "RMD method" are not actually RMDs, however, WRERA provides no relief from the 10% additional tax if these early distributions are suspended in 2009 and before the later of age 59½ or the fifth anniversary of the first payment.

If you have questions or would like additional information about the WRERA relief from RMD requirements for 2009, please feel free to contact Brian Dougherty at 215-587-5919 or bdougherty@postschell.com

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