

Widened rollover window for “mistaken” 2009 Required Minimum Distributions (RMDs) creates unique tax saving opportunity

Notice 2009-82, 2009-41 IRB; IR 2009-85

In a recently issued Notice, IRS has given older taxpayers an unusual opportunity to correct an inadvertent mistake that otherwise would unnecessarily increase their taxable income for 2009. It's also giving some a “retroactive” chance to reduce their tax bill if their financial circumstances have improved during the course of 2009. This unusual tax break involves required minimum distributions (RMDs) that would under normal circumstances have been required to be paid in 2009, were suspended by the Worker, Retiree, and Employer Recovery Act (WRERA, P.L. 110-458, Sec. 201(a)), but were nonetheless distributed earlier this year.

Background. Generally, RMDs must begin by the required beginning date (RBD), which usually is Apr. 1 of the calendar year following the later of the calendar year in which the individual (employee or IRA owner) reaches age 70 1/2. For IRAs and defined contributions plans, the RMD for each year generally is determined by dividing the account balance as of the end of the prior year by a distribution period carried in a uniform table in the regulations. For the many millions of older taxpayers whose retirement funds were invested heavily in stocks or mutual funds, the stock market collapse that began in 2008 was especially trying. To help address this problem, Code Sec. 401(a)(9)(H) provides that for calendar year 2009 only, plan account participants and IRA owners don't have to take otherwise required lifetime RMDs.

Problem of inadvertent 2009 distributions. Apparently a number of older taxpayers received “unnecessary” retirement plan and IRA distributions this year. Older taxpayers who weren't familiar with the WRERA change probably began taking what they thought were RMDs for 2009. And computerized programs at financial institutions and retirement plans probably began churning out 2009 distributions before they could be altered to reflect the late-2008 WRERA change. Because qualified plan and IRA distributions generally are fully taxable (unless nondeductible contributions had been made to the plan or IRA), these mistakes would result in a higher tax bill unless corrective action is taken.

Widened rollover window. Notice 2009-82, provides that, for *plan participants*, IRS is extending through Nov. 30, 2009 the rollover period for (1) any 2009 RMD, and (2) any additional payments that are part of a series of substantially equal payments (that include 2009 RMDs) made at least annually, and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and his designated beneficiary, or for a period of at least 10 years. For *IRA owners* who have already received distributions of RMDs in 2009, IRS is also extending the 60-day rollover period for these distributions through Nov. 30, 2009. However, because of the one-rollover-per-year- rule in Code Sec. 408(d)(3), which was unchanged by WRERA, no more than one distribution from an IRA in 2009 is eligible for this rollover relief.

RIA observation: IRS applies the one rollover-per-year rule on an IRA-by-IRA basis.

RIA observation: In effect, the rollover period for a payout that would otherwise be an RMD for 2009 is *the later of*: (1) 60 days following receipt of the distribution; or (2) Nov. 30, 2009.

RIA illustration 1: Under normal circumstances, Jack Morgan, age 72, would have had to take a \$40,000 RMD in 2009 from his IRA funded with deductible dollars. It's money he doesn't need

to live on, because Jack is a well-to-do retiree who has substantial non-retirement plan assets. Despite the WRERA change, Jack mistakenly received an IRA distribution of \$10,000 in March of this year, and failed to make a 60-day rollover of that amount to an IRA. Jack has until Nov. 30, 2009, to roll over the \$10,000 payout into an IRA and thereby avoid having to pay a tax on the distribution on his 2009 return. If he receives the mistaken \$10,000 payout on Oct. 30, he would have until Dec. 29 to roll it back into an IRA (60th day following Oct. 30).

RIA observation: The reprieve until Nov. 30, 2009, has no strings attached—there's no requirement that the taxpayer show he mistakenly asked for or mistakenly received an RMD. Thus, the extended rollover deadline aids older taxpayers whose financial circumstances have improved during the course of 2009 to the point where they no longer need retirement plan or IRA distributions to live on.

RIA illustration 2: The WRERA relief for RMDs didn't mean much to Esther Marks, who always had depended on distributions from her IRA for her living expenses. In June of 2009, she received \$15,000 of her normal RMD distribution for the current year, but in July she inherited a large sum of money from a relative and no longer needs to rely on her IRA for living expenses. Under Notice 2009-82, she can avoid paying tax on the \$15,000 IRA payout by rolling it over to another IRA no later than Nov. 30, 2009.

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