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Retirement Plan Distribution Requirements Waived for 2009

The stock market meltdown in 2008 has resulted in at least one reprieve for seniors. In 2008, President George Bush signed the Worker, Retiree, and Employer Recovery Act of 2008, which, among other provisions, temporarily suspends the penalty for seniors who do not take the “required minimum distributions” (“RMD”) from their IRAs or 401(k) accounts in 2009.

There is normally a 50% excise tax as a penalty for failure to withdraw the appropriate amount each year when account owners reach retirement age, after age 70 1/2. The percentage that must be withdrawn is based on life expectancy and increases every year. In order to prevent seniors from selling stock in a down market to fund their RMDs, Congress suspended the RMD rule for 2009. Those who turned 70 1/2 prior to 2008 will not have to take the RMD that would normally be required by December 31, 2009. Those who turn 70 1/2 in 2009 will not have to take the RMD that would normally be required by April 1, 2010. Beneficiaries of inherited IRAs and employer retirement accounts are also covered by the penalty freeze for 2009.

The penalty freeze did not affect RMDs for 2008; unfortunately, this may have resulted in a double hit for seniors. The RMDs are based on a percentage of what the IRAs and other retirement accounts were worth at the end of 2007. If the accounts were heavily invested in stocks, then they could have lost 30% to 40% in the last year. The taxpayers will have to withdraw and pay taxes on a higher amount taken from accounts that may have lost significant value. Those who turned 70 1/2 in 2008 have until April 1, 2009, to take their first RMD. These taxpayers may want to see if the firm holding their accounts will allow them to take an in-kind distribution that could then be transferred to a taxable account. For example, Fidelity and T. Rowe Price allow such distributions, but others, such as Vanguard and TIAA-CREF, do not allow such transfers.

Many older taxpayers rely on the RMDs for their daily living expenses; these seniors may not benefit from the penalty freeze. Seniors who do not need the funds from RMDs for their living expenses can benefit more from the penalty freeze. Some taxpayers may decide to take distributions equivalent to their 2009 RMD even with the penalty freeze. If they take distributions in 2009 and pay taxes on the withdrawals, then they may be able to put the after-tax dollars into a Roth IRA if they meet the earned-income requirements for funding Roth IRAs. RMDs cannot be used to fund Roth IRAs, but other non-RMD withdrawals can be used. This could be particularly beneficial for taxpayers turning 70 1/2 in 2009; they could withdraw the funds between January 1 and April 1, 2010, and transfer the funds into a Roth IRA in 2010 when the income restrictions on funding Roth IRAs are lifted.

The economy will continue to be a concern for seniors and their families in 2009. **For help with your estate, financial, veterans' benefits and special needs planning matters, contact Richard Courtney at 601-987-3000 or toll-free at 866-ELDERLAW (353-3752).**