October 28, 2009

IRS Provides Guidance on Waiving 2009 Required Minimum Distributions

In Notice 2009-82, the IRS announced that plan sponsors must make decisions relating to the waiver of 2009 required minimum distributions ("RMDs") for defined contribution plans, such as 401(k) plans, by **November 30, 2009**. For this purpose, "2009 RMDs" are (i) RMDs payable by April 1, 2010 for participants who turn age 70½ during calendar year 2009, and (ii) RMDs payable during 2009 that are the participants' second or later payments under an installment or annuity form of payment.

Generally, a participant who attains age 70½ during the calendar year is required to receive a RMD by April 1 of the following calendar year. In addition, RMDs may not be rolled over into an IRA or other eligible retirement plan. In order to alleviate some of the financial burdens on older Americans, the Worker, Retiree, and Employer Recovery Act of 2008 (the "Act") waived the 2009 RMD for IRAs and defined contribution plans and permitted certain amounts distributed as 2009 RMDs to be rolled over into an IRA or another qualified retirement plan. Due to the confusion about the effect of the Act, the IRS recently issued Notice 2009-82.

Notice 2009-82 requires plan sponsors to take the following actions:

- Decide by November 30, 2009 how the plan intends to treat 2009 RMDs. Plan sponsors may choose among the following three options:
  - Suspend all RMDs for the 2009 plan year, unless a participant affirmatively requests a distribution;
  - Distribute all RMDs for the 2009 plan year, unless a participant affirmatively elects otherwise; or
  - Continue RMDs in accordance with the terms of the plan with no choice by the participant.

- Decide by November 30, 2009 whether the plan will permit direct rollovers of distributions of 2009 RMDs from the plan. Plan sponsors may choose among the following three options:
  - Not permit direct rollovers of 2009 RMDs;
  - Permit direct rollovers of 2009 RMDs; or
  - Permit direct rollovers of 2009 RMDs if the 2009 RMD is part of a distribution that would otherwise be an eligible rollover distribution.

  (For non-direct rollovers by individuals of their 2009 RMDs, Notice 2009-82 extends the deadline to complete the rollover to a qualified plan or IRA until the later of November 30, 2009, or 60 days after the date the distribution was received. Distributions of 2009 RMDs will not be subject to the mandatory 20% income tax withholding that normally applies to eligible rollover distributions.)

- Beginning **December 1, 2009**, plans must be in operational compliance with the decisions made.

- If the plan sponsor's decisions require an amendment to the plan, the plan must be amended by the last day of the plan year beginning on or after January 1, 2011 (2012 for governmental plans). Notice 2009-82 provides two sample plan amendments that plan sponsors can use in drafting plan amendments. The sample amendments will need to be modified to conform to each plan's terms and administrative procedures.

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