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Pension Digest Alert

CWF's Explanation of Notice 2009-9

On December 23, 2008, President signed the Worker, Retiree, and Employer Recovery Act of 2008 (the Act) into law. Section 201 of the Act waives any required minimum distribution (RMD) for 2009. Since RMD notices were due to be mailed to IRA accountholders subject to the RMD rules, the IRS issued in mid-January Notice 2009-9. It provides additional IRS guidance.

Again, all 2009 RMDs are waived. Another way of phrasing it is, no distribution during 2009 for 2009 is a required distribution. This waiver rule applies to distributions to accountholders and beneficiaries. There is a special rule for a beneficiary who is subject to the 5-year rule with 2009 being the last year. This means the IRA accountholder died in 2004. In this case, the beneficiary is given an additional year to close the IRA. For example, an IRA accountholder died on February 3, 2004 at age 58. A daughter beneficiary elected the 5-year rule. Her deadline to close the inherited IRA was December 31, 2009. Since all RMDs are waived for 2009, her revised deadline is December 31, 2010.

There is no waiver of any RMD for 2008. The IRS encourages an IRA custodian/trustee to inform those IRA accountholders who deferred their 2008 RMD until January 1 to April 1, 2009, that they are still required to take their 2008 RMD.

There is also no waiver under the Act of any RMD for 2010 or any subsequent year. Of course, it is possible there could be additional legislation extending the waiver or possibly making it permanent.

The IRS guidance:

1. The Preparation of the 2008 Form 5498 (Deadline of June 2, 2009 Since May 31 falls on a Saturday).

The IRS would prefer that a check mark not be put in box 11. Reason: check box 11 when there is an RMD. Now that there is no RMD for 2009, the box should be left blank.

The IRS provides a second alternative if it is impossible to change the Form 5498 programming on time. The option is – if the IRA custodian notifies the IRA accountholder that there is no RMD required for 2009 by March 31, 2009, then Box 11 can be left checked on the Form 5498. The critical requirement obviously is, notice must have been given by March 31, 2009. It is implied that this Notice is a personal notice (letter, email, etc.) and is not a generic notice as a posting in the lobby or on a website.

2. The Preparation of the 2009 RMD Notice.

The general rule is that the IRA furnishes a notice by January 31st setting forth: the RMD amount, the appropriate deadline, and the note that the IRS will be informed that the person is subject to the RMD requirement for 2009.

The IRS would prefer that no RMD notice is sent. Again, there are no RMDs required for 2009.

If an IRA custodian/trustee elects to send an RMD notice, it must show the RMD for 2009 as zero (0). Alternatively, it may send a notice with the RMD amount which would have

applied but for the waiver, as long as there is an explanation of the waiver for 2009.

3. Rollover Possibility

The IRS acknowledges that some RMD distributions may take place because the accountholder and the IRA custodian have agreed to a schedule of RMD distributions. A recipient accountholder may be able to roll over such distribution into the same or a different IRA. The standard roll-over rules must be met, including the once per year rule.

4. Special Beneficiary Rule

As discussed previously, for beneficiaries of accountholders dying in 2004, December 31, 2009 would have been their deadline to close the inherited IRA. This amount to be withdrawn from an inherited IRA is an RMD. Since RMDs have been waived for 2009, it was really necessary to give such beneficiaries an additional year to close the IRA.

The IRS does not expressly address how this 2009 waiver rule impacts those beneficiaries of accountholders who died or die during 2005-2009. Do they also receive a one year extension? For example, an IRA accountholder, age 65, dies on January 15, 2008. Her beneficiary is her son. He elects the five year rule. Is his deadline December 31, 2013 or December 31, 2014? The IRS should issue additional guidance on this situation/question as it is not expressly covered in Notice 2009-9 or the Act. However, it appears the IRS has decided to give all beneficiaries of accountholders dying during 2005-2009 an additional year to close the inherited IRA.



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