IRS Provides Guidance on 2020 Waiver of Retirement Plan Required Minimum Distributions

Aug 13, 2020

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Tax Law Defined™ Blog

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a relief package in response to the COVID-19 pandemic which became law in March 2020, allows individuals to avoid taking a required minimum distribution (RMD) from their retirement plans or IRAs for 2020. This relief applies to employer-sponsored defined contribution plans as well as Individual Retirement Accounts (IRA) but does not apply to employer-sponsored defined benefit plans. If not paid in 2019, this temporary waiver of the RMD requirement also applies to an RMD first required in 2020 because the individual left employment or reached age 70½ in 2019 and would otherwise have had to take their first RMD by April 1, 2020. In addition, the five-year period by which certain account balances must be distributed after the death of the participant will be extended by one year such that 2020 will be disregarded for participants who died in 2015 through 2019, but not for participants who die in 2020.

The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) changed the date by which RMDs must generally begin ("required beginning date"). It was previously April 1 following the year in which an individual attains age 70 ½. It has changed to April 1 following the year in which an individual attains age 72, for individuals who attain age 70 ½ after December 31, 2019. A retirement plan participant who is not a 5% owner of the employer may delay receipt of RMDs until April 1 following the year in which the employee retires. A plan that currently provides that RMDs are based on age 70 ½ (rather than incorporating a statutory reference to the RMD requirement which is rare) will have to be amended if it wishes to defer the RMDs until after age 72 as described above. The rules for defined contribution plan distributions to non-spouse beneficiaries after death were also changed to generally require distribution within 10 years, no longer allowing distributions over life expectancy except for distributions to "eligible designated beneficiaries" which include a spouse,

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children under the age of majority, certain disabled or chronically ill individuals or an individual who is not more than 10 years younger than the participant. These new non-spouse beneficiary rules will generally require a plan amendment unless the plan currently incorporates the statute by reference.

In June 2020, the IRS issued Notice 2020-51 providing guidance on how to interpret and administer the 2020 RMD waiver provisions in the CARES Act and the required beginning date provision in the SECURE Act. The following are highlights of the recent IRS Notice:

Is a retirement plan amendment required to suspend payment of RMDs?

An employer retirement plan must be amended if the employer wants to allow the suspension of 2020 RMDs. The amendment is not required to be completed until the last day of the 2022 plan year (2024 plan year for governmental plans). An IRA does not have to be amended to reflect the waiver of the RMD.

Sample Plan Amendment

The IRS Notice contains a sample plan amendment that can be adopted by an employer with two basic options. The first option provides that the 2020 RMD *will be distributed* unless a plan participant elects otherwise. The second option provides that the 2020 RMD *will not be distributed* unless a plan participant elects otherwise. An employer cannot amend the plan to suspend payment of 2020 RMDs without giving the participants the right to elect otherwise. Any amendment must reflect the operations of the plan beginning with the effective date of the amendment. An employer is not required to amend a retirement plan to suspend payment of the 2020 RMDs, though participants would still be allowed to rollover the 2020 RMD back to the plan if the plan permits rollovers. The sample plan amendment also allows four different options, one being a default option, with respect to the availability of direct rollover choices for distributions in 2020 that can expand the types of distributions that are considered "eligible rollover distributions". If the default is chosen, a direct rollover is

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offered only for distributions that would be eligible rollover distributions in the absence of the CARES Act provisions.

Tax Withholding

Even though participants who receive an RMD from a retirement plan or IRA in 2020 may roll this amount back into a retirement plan or IRA, the distribution is not technically considered an "eligible rollover distribution" so the distribution is subject to an optional 10% federal income tax withholding rate and not the 20% mandatory withholding rate that applies to eligible rollover distributions.

Rollover allowed of any 2020 RMD previously paid (and certain 2021 distributions)

Individuals who receive an RMD in 2020 or one or more payments that include a 2020 RMD that would be treated as part of a series of substantially equal periodic payments may rollover such distribution to an employer's retirement plan (including to the same retirement plan assuming the plan permits rollovers) or to an IRA. The deadline to roll over any such distribution, which normally is 60 days from receipt, will not be before August 31, 2020 even if the distribution was made as early as January 2020. If a distribution by an IRA is rolled over to the distributing IRA by August 31, 2020, such rollover will not be treated as a rollover for purposes of the one rollover per 12-month period rule and the restriction on rollovers for non-spousal beneficiaries. A participant can also rollover a subsequent plan distribution made in 2021 if their RMD "required beginning date" was April 1, 2021 and they had previously received a distribution of their RMD for 2021. A rollover of a distribution made to an individual in 2020 who attained age 70 ½ in 2020 and whose required beginning date is now based on age 72 (assuming the plan is so amended under the SECURE Act) is also allowed.

Five-year/life expectancy rule election extension

The deadline for a beneficiary making an election for the use of either the five-year rule or the life expectancy rule in determining

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an RMD is typically the December 31 of the year following the calendar year of the participant's death. This deadline is extended one year to December 31, 2021 if the deadline is otherwise December 31, 2020. There is no similar extension if death occurs in 2020.

Deadline for direct rollover for a non-spouse designated beneficiary

A non-spouse designated beneficiary of a participant who dies in 2019 has until December 31, 2021(rather than 2020 as would otherwise be the case) to make a direct rollover from the participant's retirement plan to an IRA and use the life expectancy rule rather than the five-year rule for determining the RMD.

These rules and options are complex and employers who sponsor retirement plans will need to keep track of how they administer these issues, especially if plan amendments are not made until 2022 (or 2024 for governmental plans).

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