

## **Good News: One-Year 2009 Moratorium on Required Minimum Distributions**

In December 2008, Congress passed, and President Bush signed, *The Worker, Retiree, and Employer Recovery Act of 2008 (H.R. 7327)*. This did not receive much media coverage at the time, due to the holiday season and the main Washington-media focus at the time being the automakers' bailout-plan drama. But the new law means potential good news for people otherwise required to take a required minimum distribution (RMD) in 2009.

The law provides relief to retirement account holders age 70-1/2 and older by placing a one-year moratorium on RMDs for certain retirement plans (typically, non-Roth IRAs, and 401(k)/similar plans) for 2009 regardless of an individual's total retirement account balance. The law is NOT retroactive and does NOT apply to RMDs for 2008.

Under the pre-existing law, individuals who have reached age 70-1/2 must take an annual minimum amount from their retirement plan or IRA/similar account. Failure to take the distribution would subject the individual to a 50% excise tax penalty on the amount that should have been withdrawn. The reason that the new law's moratorium on RMDs is good news is that it can enable retirees to escape being forced to sell some of their retirement account assets in or after what has been a falling stock market. Much of the early media writing about the RMD problem in the wake of the major market decline had been focused on people being "forced to sell low" – but that assumes they do not reinvest withdrawn amounts at equally (presumed) low prices.

The amount of each person's RMD is based on their age and is defined as a percentage (which rises each year as we age) of the total value of the IRAs or other similar accounts (Roth Accounts are not included) – and the value for the calculation is December 31 of each year. Thus, had the one-year moratorium on 2009 RMDs not been passed, people over 70-1/2 would have been required to make a withdrawal during 2009 of a certain age-driven percentage of their accounts' value as of December 31, 2008, when the market was quite depressed after a year-plus bear market of historic proportions.

Each individual has specific income needs and tax considerations, so readers should consider their options in consultation with appropriate tax advisors. The principal benefit of the one-year moratorium will be felt by investors who are not forced to make withdrawals to cover living expenses. A few possible approaches such as discussed below might be worth considering – again, subject to individuals' overall situations.

First, if a person does not need the assets for current living expenses, he or she could take advantage of the one-year moratorium by skipping a year's otherwise-required withdrawal. All other things being equal, which includes assuming that the investment account does not depreciate further, this approach would increase the amounts left for future years' taxable withdrawals, thus forcing a higher percentage each year to be applied to a higher dollar value than if the 2009 withdrawal had been made.

If a person expects to be in a low tax bracket in 2009 as compared with future years (including if they expect higher tax rates to be enacted by Congress in the future), he or she might consider ignoring the moratorium and taking a withdrawal (and pay the associated tax) in 2009 anyway. The assets could be spent or reinvested net of tax.

If a person is willing to pay the required tax, he or she might consider converting some retirement assets (perhaps equal to the otherwise previously expected RMD amount) to a Roth IRA. This approach would pretend the moratorium had not been granted, and would allow the converted assets to appreciate for the future with no future tax liability, since there is no tax on Roth IRA distributions and their timing is totally voluntary after age 59-1/2 provided the Roth account has been established in any dollar amount for five years. It should also be noted that voluntarily paying a tax before it is actually due (as when one makes a Roth conversion) is most attractive for those with longer remaining life expectancies, since assets in the Roth will have more years to appreciate tax free.

A fourth option is available but is not nearly as tax-friendly: Under this approach, a person willing to pay the tax currently could take the otherwise-required RMD amount and invest it in a taxable account. The amount still invested for the future would be the withdrawn amount less the tax paid, unless the tax can be paid out of other liquid balances owned by the taxpayer.

Investors normally using retirement-account assets for current living expenses could consider using the moratorium in 2009 and instead selling off assets in 2009 from taxable accounts (perhaps at capital losses which can be used up to \$3,000 to reduce taxes). This approach would improve cash flow by reducing 2009 income taxes due and by not requiring tax payments that would otherwise have been due on RMD amounts actually withdrawn anyway for living expenses.

It should be noted that such 2009 options as described above (or any others) need not be implemented on an all-or-none basis. An investor can withdraw or convert any amount without penalty, not just a choice between zero and a full RMD amount. Roth conversions are subject to limitations if a taxpayer has a high level of adjusted gross income: see instructions for Form 1040.

One approach may have merit for investors who have capital loss carryovers in their taxable accounts after the market decline of 2008. Here, one might consider taking a distribution (or making a conversion to Roth) of \$3,000 (or \$1,500 if married-filing-separately) in 2009. The tax liability created by such a withdrawal would be offset by the tax saving on \$3,000 of losses carried forward, thus leaving tax liability equal to its original amount and yet converting or withdrawing a small amount of assets from the pool otherwise subject to future years' RMDs.

**Important reminder:** The Retirement Investing Institute (R-I-I) does not provide individual investment or tax advice. This article and brief analysis is intended merely to draw readers' attention to *The Worker, Retiree, and Employer Recovery Act of 2008 (H.R. 7327)*; readers are encouraged by R-I-I to do their own further research and to consult with appropriate professional advisors.