



**Strasburger**  
ATTORNEYS AT LAW

# Strasburger Tax Strategies

TAX STRATEGIES NEWSLETTER • FEBRUARY 05, 2009 • STRASBURGER & PRICE, LLP

## PREPARED BY



[Drake A. Frazier](#)

901 Main Street  
Suite 4400  
Dallas, Texas 75202  
214.651.4712 Direct  
[drake.frazier@strasburger.com](mailto:drake.frazier@strasburger.com)

## EDITORS

[Luke Bailey](#)  
[Farley Katz](#)

## TAX STRATEGIES GROUP

[Luke D. Bailey](#)  
[James R. Browne](#)  
[Daniel L. Butcher](#)  
[Gus Fields](#)  
[R. Bradley Fletcher](#)  
[Drake A. Frazier](#)  
[Farley P. Katz](#)  
[Jack M. Kinnebrew](#)  
[Ashley T. Kisner](#)  
[Dennis Konopatzke](#)  
[Gary Lawson](#)

## The Worker, Retiree, and Employer Recovery Act of 2008 Suspends Required Minimum Distributions in 2009

In December 23, 2008, President George W. Bush signed the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA").<sup>1</sup> WRERA makes technical corrections to the Pension Protection Act of 2006 ("PPA") and amends the PPA, the Internal Revenue Code ("Code"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Age Discrimination in Employment Act of 1967 ("ADEA"). Among other things, WRERA suspends the Required Minimum Distribution ("RMD") rules for 2009 for 401(k), 403(b), governmental 457(f) and other defined contribution plans and individual retirement accounts ("IRA's") but not for defined benefit pension plans. The RMD suspension is a direct reaction by Congress to limit the downturn in the financial markets and its effect on retirement accounts. It allows participants to postpone selling their investments at current depressed values. Employers that sponsor certain qualified plans need to be aware of how the suspension of the RMD rules may affect their plan administration.

Generally, Section 401(a)(9) of the Code requires participants to begin receiving distributions from a qualified plan no later than April 1 following the year in which the participant reaches age 70 ½. If distributions do not begin by that deadline, an excise tax applies equal to fifty-percent of the amount that should have been distributed. WRERA temporarily suspends the RMD rules for calendar year 2009.

The suspension applies to distributions otherwise due in 2009 and to those otherwise due on or before April 1, 2010 with respect to individuals who attain age 70 ½ in 2009. For example, an individual who attained age 70½ in a year before 2008 and who has been receiving annual RMD's for years before 2009 can simply skip his or her 2009 RMD if he or she wants to do so. Similarly, had WRERA not been

[Michael A. McClelland](#)  
[Crawford Moorefield](#)  
[Charles J. Muller](#)  
[Toni Scott Reed](#)  
[John K. Round](#)  
[Dani D. Smith](#)  
[Jan Stacey](#)



[Printer friendly page](#)



[View as Acrobat PDF](#)



[Subscribe to TAX RSS](#)

enacted, if a participant reached 70 ½ in 2009, then a plan would normally require that the RMD begin no later than April 1, 2010. This is because for the first RMD, there is a three-month grace period for completing the distribution. However, with WRERA, the required minimum distribution for 2009 that generally would need to be paid out by April 1, 2010 would not need to be paid in either 2009 or 2010, although the separate RMD amount for 2010 would need to be paid by December 31, 2010.

In the case where a participant dies before the RMD begins, and the account balance is distributed under the five-year rule, WRERA provides a one-time distribution waiver. The result is that beneficiaries receiving payments over a five-year period can extend the distribution period over a six-year period.

The law does not suspend RMD's for 2008. So, where an RMD is due on or before April 1, 2009 with respect to an individual who attained age 70 ½ in 2008, the distribution must still be made. Note that WRERA does not suspend the RMD rules for 2010.

Most retirement plans provide that a RMD must be paid out. So employers will generally need to amend their retirement plan in order to suspend the application of the RMD rules for 2009. These amendments must be adopted on or before the last day of the plan year beginning on or after January 1, 2011. In the case of a calendar year plan, the plan must be amended on or before December 31, 2011. Also, for governmental plans, the amendment must be adopted on or before the last day of the plan year beginning on or after January 1, 2012.

If an employer decides to make distributions in accordance with each participant's previous election, despite WRERA's waiver, then the distributions may generally be treated as an eligible rollover distribution ("ERD"), i.e., the distribution may be rolled over by the distributee to an IRA or another eligible retirement plan.<sup>2</sup> Note that WRERA waives the direct rollover notice, and twenty-percent income tax withholding requirement for participants or beneficiaries that receive a 2009 RMD.

Surprisingly, WRERA does not require that the plan notify the participants or beneficiaries, before the distribution, of their opportunity to elect not to take the 2009 distribution. Even in the absence of a notice requirement, employers may find it prudent to inform participants and beneficiaries of the opportunity to suspend their 2009 distribution.

In light of WRERA, employers will need to decide how they wish to address RMD's for 2009, i.e., continue distributions based on previous elections and presumably provide notice to participants and beneficiaries of the RMD suspension opportunity, suspend all RMD's and provide notice to the participants and beneficiaries of their opportunity to "opt out" of the suspension, or let each participant elect whether to receive his or her RMD for 2009. But before an employer can decide how to best address WRERA's one-time suspension of the RMD rules, the employer will want to review the current requirements of its plan document, and also want to review how many participants and beneficiaries are otherwise scheduled to receive a RMD. Then, the employer will have a better idea of how to best approach the suspension of the RMD rules.

If you have any questions regarding the suspension of the RMD rules for 2009, or any of WRERA's other provisions, please contact [Drake Frazier](#) or another member of Strasburger's [Employee Benefits / Executive Compensation Practice Team](#).

---

<sup>1</sup>Pub. L. No. 110-458 (2008).

<sup>2</sup>Distributions that are not eligible for rollover under WRERA include (i) any distribution that is one of a series of periodic payments generally for a period of 10 years or more (or, if a shorter period, certain life expectancies), and (ii) hardship distributions. See I.R.C. § 402(c)(4). There is a possibility that future IRS guidance will allow periodic payments that were made as part of a distribution schedule designed to comply with the RMD requirements to be treated as "independent payments" under Treas. Reg. § 1.402(c)-2, Q&A-6(a), but the IRS has not yet clarified this point.

#### **PUBLICATIONS:**

- To view past issues of the Tax Strategies Newsletter, please visit [Tax Strategies Newsletter](#)
- To subscribe to other Strasburger publications, please visit [Strasburger Publications](#)

**DISCLAIMER:** Any tax advice contained in this communication and any attachments was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under applicable tax laws, or (ii) promoting, marketing, or recommending to another party any transaction or tax-related matter.

Articles contained within this newsletter provide information on general legal issues and are not intended to provide advice on any specific legal matter or factual situation. This information is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. Readers should not act upon this information without seeking professional counsel.

**ADVERTISEMENT NOTICE:** This e-mail may constitute a commercial electronic mail message subject to the CAN-SPAM Act of 2003. If you do not wish to receive further commercial electronic mail messages from the sender, please send an e-mail to [Strasburger@Strasburger.com](mailto:Strasburger@Strasburger.com) and request that your e-mail address be removed from future mailings. To update your address, please send an email to [Strasburger@Strasburger.com](mailto:Strasburger@Strasburger.com) including the updated information. Strasburger & Price, LLP, 901 Main Street, Suite 4400, Dallas, TX 75202.

