

ONE YEAR RELIEF FOR RETIREES

The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") provides a one year relief in 2009 for retirees from taking a minimum required distribution ("MRD") from a qualified plan, including a 401(k), 403(a), 403(b), and 457(b) governmental plan and an individual retirement account ("IRA"). An MRD is a minimum amount that is required to be distributed from a qualified plan or IRA when an individual reaches age 70½ or the April 1st following the year of retirement. If the MRD is not distributed timely, a 50% excise tax is imposed on what is not distributed. But for 2009, the amount that would normally be an MRD need not be distributed or if distributed, may be rolled over into another qualified plan or IRA. The reason for the one year relief is due to the severe economic situation that created large losses in account values and an attempt by Congress to allow individuals to regain some of those losses. The IRS is currently considering additional guidance, but for now we know that an individual, who turns 70½ in 2009 and would normally be required to take the first MRD for the 2009 year by April 1, 2010, can waive the 2009 MRD and we know that a beneficiary, who is taking MRD's under the five-year rule due to the death of a participant, may waive the 2009 MRD and, in effect, will receive another year (a sixth year) to take the full distribution. Note this does not apply to 2008 MRD's that are required to be taken by April 1, 2009. The new law also provides that the would-be 2009 MRD amount is not subject to the mandatory 20% withholding requirement (it would be subject to 10% withholding) and the plan sponsor does not have to treat the amount as an eligible rollover amount nor give the rollover distribution notice. While individuals can still take an MRD in 2009, this is an important benefit for those who may not need to take a distribution. Plan sponsors will need to look at procedures, participant elections and related matters in considering this one-year relief, but plans and IRA's are not required to be amended until the 2011 Plan Year. We'll keep you informed as the IRS publishes its guidance.

CHANGING YOUR MATCHING CONTRIBUTION

One of the questions being asked by many employers is whether the company can reduce or stop the company match to their 401(k) plan. The answer is yes and many companies are opting for this to reduce expenses and hopefully retain jobs. If your plan already provides for discretionary matching contributions, each year the company's board of directors decides whether and how much of a matching contribution the company will make to the plan. For 2009, the board may decide to provide no matching contribution without amending the plan. Participants should be notified of the board's decision and allowed to change deferral elections. If the plan has a required match or provides a so-called "Safe Harbor" matching contribution, with proper notice to participants, the plan may be amended during the year to reduce or eliminate the required matching contribution, including the Safe Harbor matching contribution. Elimination of a fixed matching formula can take some of the financial strain off the company. If your 401(k) plan allows for a Safe Harbor non-elective contribution of 3% of compensation, the final Treasury regulations do not allow for a mid-year change by the company for this type of Safe Harbor contribution unless the plan is terminated during the plan year. Of course, the company may amend the plan to eliminate the Safe Harbor non-elective contribution for the next plan year. Even if your company eliminates a matching contribution for 2009, there are still many valid reasons for employees to continue to defer from their wages, including deferral of taxes and saving for retirement.

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