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CERTIFIED PUBLIC ACCOUNTANTS

Worker, Retiree, and Employer Recovery Act of 2008 Provisions Affecting Individuals

Recent legislation has created a variety of tax and retirement planning opportunities for individual taxpayers. Some of these opportunities are temporary and require your attention.

In December 2008, the Worker, Retiree, and Employer Recovery Act of 2008 (2008 Recovery Act) was enacted, which modifies the Pension Protection Act of 2006 (2006 PPA) to ease burdens resulting from the current economic crisis.

The following are some of the highlights of the 2008 Recovery Act that affect individual taxpayers.

Required Minimum Distributions Suspended for 2009

The 2008 Recovery Act temporarily suspends the penalty for failure to take a required minimum distribution from a retirement plan. The suspension means that retirees and IRA owners may choose to forego all or part of their required distribution for 2009 without penalty, creating an opportunity to reduce their taxable income for that year. In addition, the suspension helps retirees and IRA owners avoid having to liquidate investments in a down market. Without the suspension, they could be forced to sell — most likely at a steep loss due to the stock market downturn — investments in their accounts in order to take the distribution, or face a 50% tax penalty on the amount that should have been distributed.

Ordinarily, account holders of individual retirement annuities and individual retirement accounts are required to begin taking distributions no later than April 1 of the year following the year they attain age 70 1/2. Except for 5% owners, participants of employer-provided tax-qualified plans generally must begin receiving distributions by April 1 of the year following the year in which they retire or reach age 70 1/2, whichever is later. Required minimum distributions usually are taken over the recipient's life expectancy but, in certain circumstances, continue after the death of the retiree or IRA owner over a 5-year period.

An individual who attains age 70 1/2 in 2009 is not required to take a distribution by April 1, 2010. However, that individual must take the required minimum distribution for 2010. The suspension extends the 5-year distribution period (if applicable). For example, the 5-year period that began after an individual's death in 2007 will end in 2013, instead of 2012.

Required distributions are not eligible for tax-free rollover. Nevertheless, an eligible rollover distribution made in 2009 that would have been a required distribution but for the 2008 Recovery Act is not subject to mandatory 20% withholding and may be rolled over within 60 days of the distribution.

The suspension applies to tax-qualified plans, §403(a) annuity contracts and §403(b) plans, §457 plans maintained by a governmental employer and individual retirement plans, including individual retirement accounts.

The suspension does not apply to required distributions for 2008.

Rollovers from Roth 401(k) Accounts to Roth IRAs

Under the 2008 Recovery Act, rollovers from a Roth 401(k) account to a Roth IRA are not subject to the Roth IRA adjusted gross income limits on contributions. Thus, individuals may make a tax-free rollover from a “designated Roth account” to a Roth IRA without regard to any income limit.

A plan sponsor may elect to add designated Roth accounts to its retirement plan, such as a 401(k) plan. If so, participants may make after-tax contributions to the plan in lieu of elective deferrals. A designated Roth account enables the participant to accumulate earnings on the contributions to the account that will be excluded from income when the participant withdraws them, provided certain requirements are met.

After the 2006 PPA, taxpayers may rollover a distribution from any “eligible retirement plan,” including a tax-qualified plan, into a Roth IRA. However, until 2010, generally only taxpayers with modified adjusted gross income under \$100,000 could make such a rollover. The 2008 Recovery Act eliminates the income limit, effective for distributions made after 2007.

Non-spouse Beneficiary Rollovers

Retirement plans are required to permit non-spouse beneficiaries to rollover a decedent's interest in the plan. Before the 2006 PPA, only surviving spouses could rollover a decedent's interest in a tax-qualified plan. The 2006 PPA changed this rule effective for distributions made after 2006 so that non-spouse beneficiaries could rollover a decedent's interest. However, the IRS interpreted the provision to mean that a plan could, but was not required to, offer a direct rollover of a distribution to a non-spouse beneficiary. Notice 2007-7, 2007-5 I.R.B. 395, Q&A-14.

After the 2008 Recovery Act, all plans must offer a direct rollover option to non-spouse beneficiaries beginning 2010.

Rollovers by Airline Employees

Airline workers whose defined benefit pension plan was terminated or frozen as a result of bankruptcy (filed after September 11, 2001, and prior to January 1, 2007) are allowed to rollover bankruptcy payments intended to replace lost retirement income into a Roth IRA. The provision is effective for transfers made after the date of enactment of the 2008 Recovery Act for airline payment amounts paid before, on, or after the date of enactment.