



Pathfinders in Elder Law



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Congress Waives Retirement Account Distribution Requirements for 2009

Congress has passed, and President Bush has signed, legislation that will temporarily suspend the penalty for seniors who fail to take the required minimum distribution from IRA and employer retirement accounts in 2009.

But the penalty freeze, which is part of the Worker, Retiree, and Employer Recovery Act of 2008, does not affect required distributions for 2008, which are hitting seniors the hardest, and some contend that the suspension for 2009 will only benefit more affluent seniors.

Since the idea of retirement accounts is to encourage taxpayers to save for retirement, there is normally a penalty for failure to withdraw once the account owner reaches retirement age -- after age 70 1/2. Taxpayers generally must begin taking annual distributions from their retirement accounts by the April 1 occurring after they reach age 70 1/2 or pay a whopping 50 percent excise tax on the amount that should have been distributed but was not. The percentage that must be withdrawn is based on life expectancy and increases each year. For someone who is 70 1/2

years old, the required withdrawal would be 3.65 percent of the total retirement account. But with the stock market plunge, about \$2 trillion evaporated from workplace retirement plans between October 2007 and October 2008, according to the Center for Retirement Research at Boston College. To prevent seniors from being forced to sell stocks in a down market, Congress suspended the required minimum distribution rule for 2009.

If you turned age 70 1/2 before 2009, you would normally be required to take your 2009 distribution by December 31, 2009. If you will turn age 70 1/2 in 2009, you would normally be required to take your required distribution no later than April 1, 2010. In either case, under the Act you will not need to take this distribution. The new law also waives 2009 distributions for beneficiaries of inherited IRAs and employer retirement accounts. However, taxpayers still must take their 2010 distributions no later than December 31, 2010.

Importantly, Congress did not change the requirements for 2008 distributions, meaning that taxpayers must still take their 2008 distributions by December 31 if they haven't done so already. According to the Washington Post, the bill's sponsors didn't include a provision for this year because they expected the Treasury Department and the Internal Revenue Service to come up with a solution. But the agencies have decided not to change

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the rule requiring seniors to withdraw money from their retirement accounts by the end of the year.

These taxpayers will be hit with a double whammy because the required withdrawals are based on a percentage of what the IRA and 401(k) portfolios were worth at the end of 2007, when the Dow Jones Industrial Average was still well into five digits. If the account is heavily invested in stocks, it could have lost 30 percent to 40 percent in the past year.

"Seniors are getting hit both ways," said Angela Foreshaw, a spokeswoman for AARP Pennsylvania. "If their retirement accounts have fallen and they have to [make mandatory withdrawals] and pay taxes on a higher amount, it's putting them in a difficult financial bind."

Some have also pointed out that the people who will benefit most from a temporary freeze in the required minimum distribution rule are the more affluent taxpayers who don't need the money in their retirement accounts for daily living expenses. Those who are less well off and need the money to live on will make withdrawals whether or not they are required to do so -- and may take a big loss in the process.

For more on the bill, including its full text, click [here](#).

For a background article in the Pittsburgh Post-Gazette, click [here](#). 

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