

TAX

Deferral of IRA Required Minimum Distributions Using Your 401(k) Plan

By Barry C. Feldman

With the cost of retirement increasing each year, many people approaching retirement age have determined that the life of leisure will have to wait. The need to continue working, even beyond age 70, has caused many to seek ways to defer receipt of traditional IRA distributions during the period in which they continue to work, until that time when they actually begin retirement. If this can be accomplished, it will have multiple salutary effects. First, one can avoid receiving additional income that will be taxed at a higher income tax rate, because you are still receiving employment income (and, after age 70, mandatory Social Security payments). Second, deferral extends the period in which the retirement funds can continue to grow tax-free. Third, by delaying receipt of retirement income, the amount you receive annually once you do retire will likely increase. The question is, "How can this be accomplished?"

As a general rule, an IRA owner must begin to receive distributions from the IRA (other than a Roth IRA) by April 1 of the year that follows the year in which he or she attains age 70½. See, IRC §§408(a)(6) and 401(a)(9)(C). For example, if a person turns 70 on Dec. 1, 2018, that person will not turn 70½ until June 1, 2019 and will not have to begin receiving his required minimum annual distribution until April 1,

2020. [The first year following the year you reach age 70½ you will generally have two required distribution dates: the April 1 withdrawal (for the year you turn 70½), and an additional withdrawal by Dec. 31 (for the year following the year you turn 70½). To avoid having both of these amounts included in your income for the same year, you can make your first withdrawal by Dec. 31 of the year you turn 70½ instead of waiting until April 1 of the following year.]

However, distributions from a 401(k) plan may be delayed until April 1 of the year that follows the year in which the employee actually retires, unless the employee is a 5-percent owner of the employer (including amounts owned by related parties by attribution under IRC §318). See, IRC §401(a)(9)(C). Therefore, if the employee is not a 5-percent owner, distributions from a 401(k) plan (including the proceeds which have been transferred into the plan from an IRA) can be significantly deferred. Using the example provided earlier in this article, if the employee continued to work until Jan. 1, 2024, the commencement date of the year following his 75th birthday, his required beginning date, would not occur until April 1, 2025.

The issue now becomes clear — can the IRA be transferred into the 401(k) plan and



Barry C. Feldman

if so, how and when should this be accomplished? To determine if the IRA can be transferred into the 401(k) plan, a review of the 401(k) plan's provisions must be made. If the 401(k) plan permits such a "rollover" contribution, you may move those amounts into the 401(k) plan without incurring any current tax liability by means of a "rollover" contribution. You are always 100 percent vested in any amounts you contribute to the 401(k) plan as a rollover from another qualified plan or IRA. This means that you will always be entitled to all amounts in your rollover account. You may accomplish a "rollover" of an IRA in one of two ways. You may ask your IRA trustee to directly rollover all or a portion of the IRA balance to the 401(k) plan. Alternatively, if you receive a distribution from the IRA, you may elect to deposit the proceeds into the 401(k) plan for rollover within 60 days of your receipt of the distribution.

With regard to the latter method, care should be taken to avoid the adverse provisions of IRC §408(d)(3)(B), which permit an individual to make only one non-taxable 60-day rollover from any of the individual's IRAs to a 401(k) plan in any 1-year period. See generally, *Bobrow v. Commissioner*, T.C. Memo 2014-21. Because of this restriction, a trustee-to-

plan administrator transfer is the preferred method to avoid taxation.

One final limitation must be considered before making the transfer. If a minimum distribution is required for a calendar year, the amounts distributed during that calendar year are treated as required minimum distributions under IRC §401(a)(9), to the extent that the total required minimum distribution under IRC §401(a)(9) for the calendar year has not been satisfied. Accordingly, these amounts are not eligible rollover distributions. For example, if a person's required minimum distribution from an IRA for 2018 is \$5,000 and he receives a distribution from his IRA of \$7,500, only the \$2,500 in excess of the required minimum distribution may be rolled over into a 401(k) plan. Additionally, any amount that is received after age 70 but before Jan. 1 of the year in which the employee attains (or would have attained) age 70½ will not be treated as a required minimum distribution under IRC §401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies as such.

The interaction of these various provisions can sometimes be complex. It is recommended that you contact your tax professionals before taking any action.

Note: Barry C. Feldman is counsel in the Tax, Trusts & Estates practice group of Forchelli Deegan Terrana LLP.

Lamb & Barnosky, LLP is proud to announce that Richard K. Zuckerman and Sharon N. Berlin have been selected by their peers for inclusion in the 2019 Edition of Best Lawyers in America.®



Rich was selected for inclusion in the areas of:

- Education Law
- Employment Law – Management
- Labor Law - Management
- Litigation - Labor and Employment

Rich has been named a "Best Lawyer in America" since 2012.



Sharon was selected for inclusion in the area of:

- Labor Law – Management

Sharon was named a "Best Lawyer in America" in 2016, 2017 & 2018.

Rich has also been selected as 2019 Labor Law - Management "Lawyer of the Year" for Long Island, having enjoyed the same selection in 2017. He was also selected in 2015 as Labor Law-Management "Lawyer of the Year" for New York City.

Only a single lawyer in each practice area and community is honored with a "Lawyer of the Year" award.

For over three decades, Best Lawyers has been regarded by both the profession and the public as the definitive guide to legal excellence in the United States.



www.lambbarnosky.com

534 Broadhollow Rd. | Suite 210
Melville, NY 11747
631-694-2300