

# Tax News Update

Morison Cogen LLP

December 2008



## New Economic Relief Act Benefits Seniors and Employers

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The economic downturn and mounting stock market losses are shrinking retirement accounts and impeding employers' ability to meet pension funding requirements. The Worker, Retiree and Employer

Recovery Act of 2008 (WRERA) is designed to help seniors recover some of the value their retirement accounts have lost this year and ease employer pension funding requirements that could have forced businesses to make large pension fund contributions at a time when cash is in short supply. In addition, the act "corrects" several technical provisions of the Pension Protection Act of 2006 (PPA).

### EXCISE TAX AFFECTING SENIORS SUSPENDED

Due to the steep drop in the stock market during the past several months, you likely have found that the value of your retirement plan has plummeted, too. Many seniors have been particularly hard hit because of rules stipulating that those age 70½ or over generally must take required minimum distributions (RMDs) from their IRAs, 401(k)s or other tax-deferred retirement plans each year. Failure to withdraw the RMD in any year could result in a 50% excise tax on the shortfall. The RMD for a given year is the balance as of Dec. 31 of the prior year divided by a factor based on age.

As a result, those having to take RMDs in 2008 have had to base their withdrawals on Dec. 31, 2007, values — which in many cases were considerably higher than current ones. This

requirement has caused them to take larger RMDs than they would have based on current values. These relatively larger withdrawals, combined with the drop in market value of the assets remaining in their accounts, have left many seniors with significantly reduced retirement funds.

WRERA temporarily suspends the RMD excise tax for 2009 for IRAs as well as all defined contribution plans, including 401(k), 403(b) and 457 plans. This gives seniors the option to keep remaining funds in their plans for another year without incurring a tax penalty — providing time for their investments to perhaps recoup recent losses. This provision applies to all individuals age 70½ or older, regardless of their retirement plan's account balance or whether the plan has incurred any losses.

Seniors, of course, still have the option of withdrawing funds from their plans if they need the money. But even before the recent stock market

volatility, many have preferred to withdraw only the RMD to maximize continued tax-deferred growth. And now, thanks to WRERA, they can choose not to withdraw at all — at least in 2009.

### EMPLOYER PENSION FUNDING REQUIREMENTS EASED

The economic downturn has also greatly affected employers' ability to fund pension plans. WRERA eases the pension funding requirements enacted in PPA. Here are some of the key changes for:

**Single-employer plans.** Under PPA, employers were required to increase funding for single-employer pension plans to 100%, from 90%, over a seven-year period. The target funding level is

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## New Act Benefits Seniors and Employers (cont'd)

92% in 2008 and 94% in 2009. The penalty if employers didn't reach those benchmarks had been that they must immediately fund the plan 100%.

Under WRERA, employers who can't meet these requirements must make subsequent contributions only up to the target for that year, rather than hit the 100% target.

**Multiemployer plans.** WRERA offers relief for multiemployer pension plans that are "endangered" or in "critical status." PPA provided funding restrictions for these plan types, and the new law eases those

restrictions. Specifically, the act allows plan sponsors to elect to temporarily freeze the status of certain multiemployer plans at the funding status held during the previous plan year. This covers plan years beginning on or after Oct. 1, 2008, and before Oct. 1, 2009. Also, if the plan was "endangered" or in "critical status" the preceding plan

year, it isn't required to revise its funding improvement plan or schedules until the following plan year.

### ALLOWING NONSPOUSE BENEFICIARY ROLLOVERS NOW MANDATORY

WRERA makes it mandatory that, beginning after 2009, qualified retirement plans, 403(b) plans or 457 plans allow nonspouse beneficiaries of a deceased participant to roll over their balance directly to an "inherited IRA." PPA had made this a permissible option, but not a requirement.

### KNOW HOW WRERA AFFECTS YOU

Even though WRERA's main provisions are relatively simple, knowing exactly how they affect you and what to do about them is a more complicated matter. To find out, please give us a call. We would be glad to answer any questions you have and help you take advantage of this legislation to mitigate the impacts of the current recession.



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