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Required Beginning Date Deferred by Rollover

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Retirement plans subject to required minimum distributions must begin those distributions on or before the required beginning date. The required beginning date is generally April 1 of either the year following the calendar year when age 70-1/2 is reached or, if later, the calendar year following the year when retirement occurs.

One exception to that rule is when the participant is a 5 percent owner. The year of retirement may never be used to defer the required beginning date for a 5 percent owner (as defined in section 416). The 5 percent owner test is applied for the plan year ending in the calendar year in which the employee reaches age 70-1/2.

For participants of church plans and government employees, the required beginning date may always be deferred until retirement occurs. That is a continuation of the rule in effect before enactment of the Small Business Jobs Protection Act.

Letter Rulings

Two recent letter rulings, LTR 200453015, *Doc 2005-135* [[PDF](#)], *2004 TNT 251-15* , and LTR 200453026, *Doc 2005-146* [[PDF](#)], *2004 TNT 251-17* , appear to be substantially identical rulings, except one deletes the calendar year involved. In each ruling, an individual was a participant in two plans maintained by two employers. The participant was a 5 percent owner of one employer, but not the other. We'll call the former plan "the 5 percent owner plan" and the latter "the other plan." The 5 percent owner plan was a defined contribution plan with an account balance to the credit of the participant.

During the year when the participant reached age 70-1/2, the 5 percent owner plan made its first required distribution to the participant, even though the plan could have waited until April 1 of the following year.

The participant told the IRS he did not intend to retire from employment with the employer that maintained the other plan, which accepts rollovers.

The participant proposed to withdraw the remaining balance from the 5 percent owner plan, then roll it over to the other plan. The participant had reached the "normal retirement date" under the 5 percent owner plan. Once that age is reached, the 5 percent owner plan permits in-service distributions. The rulings point out that the 5 percent owner plan accounts are not subject to the qualified joint and survivor annuity requirements because the plans meet the requirements of section 401(a)(11)(B)(iii) and may be distributed in a lump sum to the participant.

A ruling was requested that the required beginning date of the other plan would control required distributions for the rollover from the 5 percent owner plan. Thus, the required beginning date of the amount rolled over would occur on April 1 of the year following the later of reaching age 70-1/2 or retirement.

The IRS agreed, even though the transfer came from a plan in which distributions were required to begin for the year when age 70- 1/2 was reached because the participant had been a 5 percent owner.

The facts of the ruling state that age 70-1/2 had already been reached. It would seem we can assume that the purpose of the ruling was to defer distributions until retirement.

In reaching this holding, the Service relied in part on reg. section 1.401(a)(9)-7, Q&A 2 regarding transfers. That regulation treats the receipt of a transfer by a plan as an increase in the benefits provided under the receiving plan when determining the future required minimum distribution of the amount rolled over. The Service interpreted that as meaning that "the amount rolled over is subject to the minimum distribution rules of the receiving plan in the calendar year immediately following the calendar year in which the amount was distributed from the distributing plan."

Note what happens if the participant dies before reaching the required beginning date as defined by the other plan. Distributions after death will follow the rules that apply when death occurs before the required beginning date. Thus, it is possible, depending on the terms of the other plan (not the 5 percent owner plan), that the entire account may have to be distributed by December 31 of the calendar year containing the fifth anniversary of death.

Section 401(a)(9)(B)(iii) and reg. section 1.401(a)(9)-3 permit important exceptions to that rule, but it is the plan that controls. Benefits may be paid over the life of the designated beneficiary or over a period not exceeding the life expectancy of the designated beneficiary, if (1) the plan permits the exception to the five-year rule; and (2) the distributions begin no later than December 31 of the calendar year following the year of death.

Section 401(a)(9)(B)(iv) provides special rules for surviving spouses, generally deferring the required beginning date to December 31 of the year when the participant would have reached age 70-1/2. But in this case, that milestone had passed.

Relevant Code Sections

Section 401 -- Pension Plans

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