DANZIGER & MARKHOFF LLP

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SUSPENSION OF 2009 REQUIRED MINIMUM DISTRIBUTIONS FROM QUALIFIED PLANS & IRAs

The Worker, Retiree, and Employer Recovery Act of 2008 (the "2008 Act") was signed into law December 23, 2008. One very important feature of the 2008 Act is the 1-year moratorium on Required Minimum Distributions.

With some exceptions, the Internal Revenue Code ("Code") mandates that retirement plan participants and IRA account owners who have attained age 70 ½ must take annual Required Minimum Distributions. This requirement applies to (1) non-owner plan participants who have both retired and have attained age 70 ½; (2) owners who are plan participants and IRA account holders who have attained age 70 ½; and (3) inherited IRAs (i.e., benefit distributions to persons who have inherited the IRA accounts after the death of the original owner). Failure to take a required minimum distribution in any year results in a 50% non-deductible excise tax on the amount that should have been distributed.

Because of the economic downturn in 2008, Congress felt it appropriate to waive the minimum distribution requirement for the 2009 year. The new law does not preclude you from taking distributions if you wish to use the money, it just does not *require* that you take a distribution. Despite the publicity surrounding the 2009 waiver, a number of misconceptions are circulating, which we would like to clear up in the following analysis:

2008 Distribution Amounts. Required Minimum Distributions must commence in the year the account holder turns 70 ½. However, the first year's minimum distributions may be deferred until April 1 of the following year. Individuals who delayed taking their first required distri-

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THE BEST LAID PLANS: HOW YOU HOLD TITLE TO YOUR ASSETS CAN AFFECT YOUR ESTATE PLAN

As of January 1, 2009, the federal estate tax exemption has increased to $3,500,000 (from $2,000,000) and the annual exclusion from gift tax is now $13,000 (increased from $12,000). Please keep in mind that the federal lifetime gift tax exemption remains at $1,000,000. While you may not think that an update to your estate plan is necessary, please keep in mind the following points:

- Your beneficiaries (e.g. children) stand to inherit more because of the increased estate tax exemption. Should some or all of their inheritance be left in trust for your children (and eventually grandchildren) so that your assets do not pass to the spouses of your children if they divorce or die?

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Danziger & Markhoff LLP
123 Main Street
White Plains, NY 10601

Telephone 914.948.1556
Fax 914.948.1706
www.dmlawyers.com

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Attorney Advertising

Reminder: Upcoming Deadline for Accreditation for Office-Based Surgery

The effective date for physicians obtaining the accreditation which will allow them to continue to perform office-based surgery in New York is July 14, 2009. As the lead time for completing the process is several months, physicians who have not yet commenced seeking accreditation should do so now.■

Please contact Joshua S. Levine, Esq. with any questions.

Suspension of 2009 Required Minimum Distributions

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butions in 2008 must nevertheless take those distributions by April 1, 2009. The 2008 distribution requirements have not been waived.

Automatic Distributions from Financial Institutions. We understand that a number of financial institutions have set up their computerized systems in such a way that unless the account holder/beneficiary notifies them to the contrary, checks representing the annual minimum distribution will be mailed to the account holder/ beneficiary. If that happens this year and the recipient does not comply with the 60-day rollover rule (discussed in the following bold item), such distribution amounts would be subject to tax in 2009. Moreover, since recipients of certain installment payouts, and beneficiaries of an inherited account, are never eligible to rollover a retirement benefit distribution, receipt of a 2009 distribution check by such persons will result in unavoidable tax.

The special waiver only applies for 2009. Next year, the regular rules come back into play.

Account holders and beneficiaries should contact their respective financial institutions to confirm that the institution either (a) will not be making required minimum distributions in 2009, or (b) will note their files that you have specifically directed them not to make any minimum distributions to you for 2009.

Rollover of 2009 Distribution Amounts. As just mentioned, it is possible that individuals will receive minimum distribution checks from their financial institutions in 2009. However since such distributions are not deemed Required Minimum Distributions, they may be rolled over to another IRA. Such a rollover, if done within 60 days of the original distribution would allow such amounts to continue their tax-deferred status.

No Waiver for Defined Benefit Plans. The statutory waiver for 2009 is limited to IRAs and retirement plans with individual accounts, e.g. profit-sharing, 401(k) or 403(b) plans. Defined benefit plans are not included in the statutory waiver for 2009. Therefore, defined benefit plans will be making such required minimum distributions.

What Will Happen in 2010. The special waiver only applies for 2009. Next year, 2010, the regular rules come back into play. In 2010 benefit distributions will be based on the distribution tables applicable to 2010 and will use the calculation methods otherwise applicable in that year. It will not be necessary to take any special steps to deal with the 2009 amounts that were "skipped". The year 2009 will simply be treated as if it had never existed.

Conclusion:

The beneficial tax treatment provided by the 2008 Act will be helpful to individuals who otherwise would be receiving required minimum distributions in 2009. Because of the intricacies of the rule, careful planning is needed.■

If you have any questions about any of these issues, or the special rules relating to ***Individuals Subject to the 5 Year Distribution Rules*** *as well as* ***Charitable Contributions From IRAs****, please contact Ira Langer, Esq., Jay Fenster, Esq. or William Miller, Enrolled Actuary.*

Professional Practice Dissolution and An Orderly Transition

Dissolution of a partnership can be a trying process, fraught with emotional, financial and practical concerns. Prior planning, however, will ease the transition. A well-crafted partnership agreement which adequately covers dissolution issues will decrease the time, possible ill will and cost that often accompany dissolution.

Although each practice dissolution has its own specific issues, each partnership agreement should address the following:

- Voting requirements for dissolution
- Retention of office premises
- Distribution of furniture, fixtures and equipment
- Ownership of telephone number(s)
- Patient records
- Software programs & licenses
- Life insurance policies
- Protection of Senior Partner
- Continued payments to retired partner or estate of deceased partner

The first step in the dissolution process is the vote on whether the practice will be dissolved. While seemingly obvious, the voting requirements for dissolution are often missing from the partnership agreement. Depending on the size of the partnership, voting requirements could be as simple as one partner in a small two-person partnership or it could be a super majority in a large practice.

The issue of who remains in the office once there has been a decision to dissolve should also be addressed in the partnership agreement. The senior partner should have the option to have the lease assigned to him/her upon dissolution. Such option should also include the right to purchase the furniture, fixtures and equipment in the office as well as retain the office telephone numbers. The partnership agreement typically makes this option available to the next most senior partner in the event that the most senior partner does not elect such option.

Alternatively, each partner would have the right (to the extent it is feasible) to occupy the office premises as tenants-in-common and pay an equal share of the rent and related expenses. Each such partner would be entitled to an equal share of the furniture, fixtures and equipment. The telephone number could continue to be shared or an intercept telephone line could be installed.

Direction for the distribution of patient records must also be included in the agreement. The agreement should provide that the primary treating practitioner retain such records. Any dispute as to the primary treating practitioner would be resolved by the patient, who would receive a notice from the partnership and he/she should select where his/her patient records should be sent.

The partnership agreement should include mechanisms to permit each partner to obtain the life insurance on his/her life that is owned by the partnership. Each partner should have the option to purchase his/her life insurance for an amount equal to the cash surrender value plus the prepaid but unearned portion of the premium. Likewise, each partner should have access to the computer software programs maintained by the

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How You Hold Title To Your Assets Can Affect Your Estate Plan

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- Life insurance policies should be reviewed by your insurance advisors. Also, if you have purchased additional life insurance, you should consider designating an irrevocable trust as the owner and beneficiary of the policies in order to ensure that the proceeds are free from estate tax.
- Married couples whose assets now exceed the $3,500,000 estate tax exemption may need to revise their Wills in order to take advantage of both spouses' exemptions by creating a "credit shelter trust" under the Will of the first spouse to die for the benefit of the survivor. This trust is funded up to the amount of the first spouse's applicable exclusion amount, free of federal estate tax. Any appreciation on these assets is similarly free of federal estate tax at the second spouse's death. The balance of the first spouse's assets passes tax free to the survivor via the 100% estate tax marital deduction so that no federal estate tax is incurred. The credit shelter trust escapes tax at the death of the survivor who also has an applicable exclusion amount that may be applied against assets he or she owns at death. In this way, a married couple can effectively eliminate the federal estate tax on the first $7,000,000 of assets. There is

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PROFESSIONAL PRACTICE DISSOLUTION

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partnership, and, subject to the software license, should have the right to duplicate or be an assignee of such software.

The partnership agreement needs to protect the senior partner, a retired partner and the estate of a deceased partner from the consequences of dissolution. In the case of the senior partner, he/she should have the option to require the other partner(s) to withdraw from the partnership in lieu of dissolution and he/she should have a "put option" which gives him/her the ability to accelerate his retirement in lieu of such dissolution and require the other partner(s) to comply with their obligations under the agreement.

Dissolution could have a devastating impact on a retired partner or the estate of a deceased partner who is relying on the income stream due under the partnership agreement. If, upon dissolution, none of the remaining practitioners will continue to practice, any remaining proceeds upon dissolution and sale of the practice should be paid to the estate or retired partner on a priority basis. If the partners continue to practice after the dissolution, they should be required to satisfy the dissolved partnership's obligations to the estate or retired partner since they are enjoying the benefits of the goodwill he/she left behind.

Partners should review their existing agreements to ensure that dissolution issues are adequately addressed and reflect the current intentions of the parties. In the event of dissolution, prior planning will make a potentially difficult process much more manageable.■

We encourage you to call Gregory R. Tapfar, Esq. with any questions or concerns regarding your partnership agreement.

HOW YOU HOLD TITLE TO YOUR ASSETS CAN AFFECT YOUR ESTATE PLAN

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also a significant tax saving of New York estate taxes if a credit shelter trust is utilized at the first death.

For this last technique to work, it is essential that each spouse has enough assets in his or her sole name to fund the credit shelter trust, regardless of who dies first. You and your spouse may have a substantial net worth and Wills that are properly structured to create a credit shelter trust, yet you may lose this valuable technique because the trust cannot be funded. Appropriate advance planning can avoid this unfortunate result.

For example, if Jane has $7,000,000 of assets in her sole name, John has no assets in his sole name, and John dies first, at his death, nothing is available to fund the credit shelter trust under his Will. At Jane's subsequent death, her $7,000,000 estate will generate federal estate tax of $1,575,000 under current tax rates. If, instead, Jane transfers $3,500,000 of her assets to John during her lifetime, his trust can be fully funded at his death, and at Jane's subsequent death both the credit shelter trust and her $3,500,000 estate will pass estate-tax free. The unlimited gift tax marital deduction allows spouses to transfer assets between themselves without gift tax consequences.

Another example: titling of assets in either joint tenancy with right of survivorship or tenancy by the entirety means that on the first spouse's death, all property titled in that manner will pass automatically to the surviving spouse outright, by operation of law and not under the terms of your Will. As a result, that property is not available to fund the credit shelter trust. Similarly, life insurance and retirement benefits pass to the designated beneficiary by operation of law. So, if you name your spouse as the primary beneficiary, he or she will receive those assets outright and they will not be available to fund the credit shelter trust under the Will. On the other hand, holding title to assets as tenants in common does not provide for automatic transfer to the surviving spouse. Rather, the percentage owned by each spouse is subject to disposition by that spouse's Will and thus would be available to fund a credit shelter trust.

In the earlier example, assume instead that Jane and John hold $7,000,000 as joint tenants with right of survivorship. At John's death the entire property passes outright to Jane tax free, but at Jane's death, her $7,000,000 estate generates a federal estate tax of $1,575,000. If, instead, the assets are held equally as tenants in common, $3,500,000 passes under John's Will to fund his credit shelter trust, thus leaving Jane with $3,500,000 of assets, resulting in zero federal estate tax.■

Please contact Michael Markhoff, Esq. if you would like to discuss these issues in greater detail.

2009 COST OF LIVING ADJUSTMENTS FOR RETIREMENT PLANS

The IRS has adjusted its limitations on maximum benefit accruals, contributions, 401(k) deferrals and other limitations affecting retirement plans. The table below summarizes these limitations:

Subject	**2009 Level**	**2008 Level**
Defined Benefit Plan Sec. 415(b)(1)(A) Maximum Annual Benefit	$195,000	$185,000
Defined Contribution Plan Sec. 415(c)(1)(A) Maximum Annual Addition	$49,000	$46,000
Sec. 401(k) Maximum Deferral (If 50 or older as of year end)	$16,500 $22,000	$15,500 $20,500
Sec 414(q) Highly Compensated Employee Salary Level	$110,000	$105,000
Sec. 401(a)(17) Maximum Compensation For Plan Contribution Calculations	$245,000	$230,000
Social Security Taxable Wage Base	$106,800	$102,000
Hospital Insurance Tax Earnings Base	No Limit	No Limit

If you have any questions concerning any of the above, please feel free to call our actuarial staff.