

Former Spouses and RMDs

Quick-Take: An unusual rule might be encountered if a former spouse who is awarded by a QDRO a share of the participant's qualified plan account, e.g., a 401(k) account, retains his/her QDRO-awarded portion in the qualified plan, rather than rolling over that QDRO-awarded portion to his/her separate IRA.

Background: In the past these missives have periodically addressed qualified domestic relations orders (QDROs) when a qualified plan participant divorces and part of his/her qualified plan account balance, like a 401(k) account, is divided with their former-spouse. Once the QDRO is entered by the divorce court, and approved by the qualified plan administrator, the former spouse will own his/her separate account in the qualified plan.

Rollover to IRA: A rollover of that QDRO-awarded separate account balance to an IRA will be without any penalty, regardless of the former spouse's age. On occasion, however, the former spouse, who now has a separate account in the qualified plan, will elect to leave his/her retirement assets in their ex-spouse's qualified plan because once the funds are held in an IRA those retirement funds will be subject to the 'early distribution' penalty if the former spouse is younger than age 59 ½ and he/she needs to take a distribution, e.g., to pay their divorce bills, or may borrow from their account balance if the plan document permits loans.

Regulation 'Quirk:' There is an unusual rule in the IRS Regulations, however, when the former spouse chooses to retain his/her QDRO-awarded share of the retirement account in their former spouse's qualified plan. The rule applies when the plan participant reaches his/her required beginning date (RBD) and must start taking his/her required minimum distribution (RMD) from the qualified plan, i.e., age 73. [I'm ignoring the 'still working' exception if the plan participant continues to work and participate in the plan and thus defer taking RMDs.] For example, if the former spouse is age 69 and he/she has opted to retain their QDRO-awarded amount in a separate account in the qualified plan, and their former spouse attains age 73 and is therefore required to begin taking his/her RMD from their separate account, the former spouse (age 69) must also take a RMD despite the fact that he/she has not yet retained his/her RBD. In addition to this 'quirky' rule is that some plan administrators, when calculating the former spouse's RMD distributed from the plan,

will use the Single Life Table, not the more favorable Uniform Lifetime Table, which produces a smaller RMD amount.

Conclusion: It is an understatement that retirement plan distribution rules are confusing, if not often counter-intuitive. This is just another example of when a retirement account owner might be surprised by an RMD obligation when he/she has not yet reached their required beginning date. I renew my wish that Congress would spend some time simplifying the numerous and bewildering retirement plan rules in the Tax Code.

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