

2023 NATIONAL INCOME TAX WORKBOOK

CHAPTER 5: RETIREMENT TAX ISSUES



ISSUES IN RETIREMENT CHAPTER

P. 165

1. Required Minimum Distribution (RMD)

NOTE: 401(k) requires a fiduciary, IRAs do not, anyone can be a trustee

2. Early Distributions

3. Hardship Distributions

4. Qualified Charitable Distributions (QCD)

5. SECURE 2.0 Summary

WHERE TO LOCATE UNCLAIMED PENSION

<https://www.pbgc.gov/wr/missingp/resources/additional-external-resources-for-finding-an-unclaimed-pension>

<https://unclaimedretirementbenefits.com>

<https://www.irs.gov/retirement-plans/missing-participants-or-beneficiaries>

[FinCen Issues Initial Beneficial Ownership Reporting Guidance](#)

[Additional resources after checking publication 590B](#)

LEARNING OBJECTIVES

P. 165

Know required beginning dates for qualified plan distributions

Understand when a person must take required distribution (RMD)

Understand when beneficiary take RMDs

Know exceptions to additional tax on early distributions

Understand how to calculate and make a qualified charitable distribution (QCD)

Know when SECURE 2.0 changed take effect

INTRODUCTION

P. 165

Secure 2.0 changed required beginning date for RMDs from qualified plans and exceptions to early distribution tax.

Rules for RMD from IRA and other defined contribution plans are covered.

The chapter covers definition regarding beneficiary rules on distributions

The effective dates of SECURE 2.0 are listed chronologically in chart form.

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 166

The interface of the various relevant code sections are listed in the text. The text discusses all defined contribution plan's distributions.

The SECURE 2.0 requires a 10-year distributions, with a few exceptions covered later regardless of the date of death of the owner.

Dates for required RMDs applies to older taxpayers.



ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 166

Required Beginning Date

Birthdate in	Age with extension to April 1 of following year
2023	73 (changed from 2022)
2022	72 Must have already taken RMD by April 1, 2023

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 166

Required Beginning Date

Employer Plan for less than 5% owners –
Later of

- April 1 after year turning 73 OR
- Employee retires

For 5% & greater owners – IRA rules apply, when they turn 73 even if they are still working. (Shareholder will have to take a distribution)
Age increase to 75, apply to after 74th birthday on 12/31/2032

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 166

Designated Beneficiary

Prior law – pay out over beneficiary's lifetime, “stretch IRA”

For 2020 and later – general rule is complete distribution within 10 years

SECURE 2.0 allows spouse beneficiary after 12/31/23

Rules designating a beneficiary apply to IRA, 401(k) and 403(b), tax shelter annuities, i.e., teachers and hospitals

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 167

Designated Surviving Spouse – IRA choices

1. Treat spouse as owner
2. Rollover into IRA or taxable portion into
 - a. qualified 401 (k)
 - b. qualified employee annuity (403a) plan
 - c. tax shelter annuity plan (403(b) OR
 - d. Deferred compensation from state or local government (457) plan
3. Treat as beneficiary of spouse's IRA

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 167

Designated Surviving Spouse – Qualified employer plan

After 12/31/2023, surviving spouse who is a beneficiary of employer-provided qualified retirement plan can elect to be treated as employee for RMD purposes

(Editor: This would allow the assets to be managed by the employer's retirement plan)

Distribution must start not earlier than the date the employee would have been required to take an RMD.

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 167

Spousal Election

Surviving spouse may elect to be treated as beneficiary of IRA (or remaining interest of deceased spouse's account) as their own IRA

This is beneficial if the surviving spouse is younger than the deceased IRA owner. With election or rollover, required distribution is by April 1 of the year following the year when the surviving spouse turns 73.

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 167

Spousal Election - **Example 5.1 Later RMD Start Date**

Jennifer Jones died in 2023 at the age of 68

Michael, her spouse, age 66, was only beneficiary of traditional IRA

Without election, RMD begins when Jennifer would have been 73 or

April 1 of next year = April 1, 2029

With election, Michael's age determines date to be April 1, 2031

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 167

Spousal Election

Spousal election allows longer deferral because spouse can use Table III Uniform Life Expectancy table shown in **Figure 5-1**

Special rules apply when spouse is more than 10 years younger than the owner [Note: Table II, More than 10 years younger than the owner who died]

Election to be treated as their own IRA can use Table III which results in longer payout than Table I which would be used as beneficiary

FIGURE 5.1 UNIFORM LIFETIME TABLE

**Table III
(Uniform Lifetime)**

For Use by:

- **Unmarried Owners,**
- **Married Owners Whose Spouses Aren't More Than 10 Years Younger, and**
- **Married Owners Whose Spouses Aren't the Sole Beneficiaries of Their IRAs)**



Age	Distribution Period	Age	Distribution Peri
72	27.4	97	7.8
73	26.5	98	7.3
74	25.5	99	6.8
75	24.6	100	6.4
76	23.7	101	6.0
77	22.9	102	5.6
78	22.0	103	5.2
79	21.1	104	4.9
80	20.2	105	4.6
81	19.4	106	4.3
82	18.5	107	4.1
83	17.7	108	3.9
84	16.8	109	3.7
85	16.0	110	3.5
86	15.2	111	3.4

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 168

Example 5.2 Longer Deferral Period -

Frank Hernandez inherited wife, Eileen's IRA age 77

The balance was \$150,000 and he elected to treat it as his own

Table III shows at age 76 that Frank's distribution period is 23.7

*\$150,000 = \$6,329

Without election, beneficiary distribution RMD would be \$10,638. See Ex. 5.4

Practitioner Note: **Further Deferral of Tax** –For Frank's IRA, he can name his own beneficiary which will again defer the income tax

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 169

Practitioner Note: **Revised Life Expectancy Tables**

As of January 1, 2022, longer life expectancy became the rule

The former tables had been based upon 2003 rates.

Beneficiaries may wish to recalculate to reduce the distributions

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 169

Spousal Requirements for Election

To treat the IRA as their own, the spouse must be the sole beneficiary and have unlimited right to withdraw funds

A trust named as beneficiary of the IRA even if spouse is the sole beneficiary can make election per Reg. §1.108-8

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 169

Spousal Election Requirements - **Effect of Election**

Year of death considerations, has the original owner taken RMD? If not, estate is responsible.

For election year and subsequent years, IRA owner = surviving spouse for RMD calculation.

Spouse election, wait until spouse reaches date to require RMD

Alternatively, surviving spouse is deemed to have made election when

1. Beneficiary RMD was not made within the time frame OR
2. Surviving spouse makes contribution to the IRA

Deadline for making election – later of end of calendar year in which spouse reaches 72 (73) or end of calendar year following year of IRA owner's death

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 169

Spousal Election Requirements

Practitioner Note: **Early Distribution Additional Tax**

If surviving spouse is under 59 ½ and elects to be treated as the owner, 10% early withdrawal additional tax does apply

The spouse can wait to make election because distributions to beneficiary are not subject to the 10%. However, consider the proposed regulations for the limits in making election

However, even if spouse has not reached 59½ before the deadline, that person can roll over distributions to their own IRA

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 170

Spousal Rollover

Even if not the only beneficiary, spouse can roll over the distribution.

Eligible rollover distribution is tax free. The amount can be deemed to be direct rollover and transfer to a new plan

Deemed Beneficiary

If no one is designated beneficiary and spouse is the sole beneficiary of deceased spouse's estate, spouse is deemed to qualify

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 170

Example 5.3 Estate as Sole Heir

Barry Williams did not designate beneficiary of his IRA

Betty, his surviving spouse, is the personal representative of his estate

Even if not the only beneficiary, spouse can roll over the distribution.

Eligible rollover distribution is tax free. The amount can be deemed to be direct rollover and transfer to a new plan

Deemed Beneficiary

If no person is designated beneficiary, and spouse is the sole beneficiary of deceased spouse's estate, spouse is deemed to qualify.

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 170

Practitioner Note: **Nonspouse Beneficiary Rollovers**

Proposed Treas. Reg. §1/1403(c)(2) states a nonspouse can elect to have any portion of an eligible distribution transferred from direct trustee-to-trustee to a separate IRA

The distribution has to meet the eligible distribution rules and remains an inherited IRA and subject to the RMD rules.

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Direct Rollovers

As long as the rollover to an eligible plan is trustee-to-trustee no current income is reported by the beneficiary.

The 60-day deadline for eligible rollovers does not apply because the beneficiary did not receive the cash or distributed property.

Distributions

Other than required distributions, spouse can roll other distributions to the spouse's IRA and is not part of the decedent's interest

Deadline is 60-days from distribution

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 171

60-days Requirement

Transfer to new plan must be within 60 days after of the receipt of the distribution

The 60-day deadline can be different than the date of the check, date the distribution was mailed, or date the amount was deposited into the participant's account. The period is actual days and is not extended. If holidays or non-business days are a problem, the transaction needs to be done before those days. The due date is not extended to the next business day.

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 171

Waiver of the 60 Day Requirement

IRS can waive the requirement if the recipient can show the delay was beyond their control.

Four ways to obtain the waiver of 60-day rollover period,

1. TP qualifies for automatic waiver
2. TP request a private letter ruling
3. TP self-certifies than they meet the requirements for a waiver – special rules
4. IRS upon audit determines TP qualifies

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 171

Spouse as Plan Beneficiary If the spouse beneficiary does nothing, it remains in the decedent's name. If decedent died **before** lifetime distribution started, generally must take distributions by the later of

1. December 31 of the year following the year of death or
2. December 31 of the year in which the decedent would have to make distributions (age 73 for deaths after 2022)

After lifetime distribution has started

If the decedent has started taking distributions, and spouse does not make any election, distributions start the following year over spouse's life expectancy (Editor: Payment in the year of death, the income is responsibility of estate to take decedent's RMD) This is generally shorter than if spouse made an election.

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 171

Example 5.4 Distributions over Surviving Spouse's Life Expectancy Follow-up to Ex. 5-2

Frank does nothing, his RMD is based on Table I, single life expectancy in Figure 5.2

$\$150,000 / 14.1 \text{ life expectancy at age 76} = \$10,638 \text{ RMD}$

If the decedent has started taking distributions, and spouse does not make any election, distributions start the following year over spouse's life expectancy The amount is greater than if an election was made

FIGURE 5.2 SINGLE LIFE EXPECTANCY AGE 76

P.172

Age	Life Expectancy	Age	Life Expectancy
60	27.1	91	5.3
61	26.2	92	4.9
62	25.4	93	4.6
63	24.5	94	4.3
64	23.7	95	4.0
65	22.9	96	3.7
66	22.0	97	3.4
67	21.2	98	3.2
68	20.4	99	3.0
69	19.6	100	2.8
70	18.8	101	2.6
71	18.0	102	2.5
72	17.2	103	2.3
73	16.4	104	2.2
74	15.6	105	2.1
75	14.8	106	2.1
76	14.1	107	2.1
77	13.3	108	2.0



ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 172

Surviving Spouse's Election to Be Treated as Employee Starting in 2024

Before RMDs have started and employee dies, sole beneficiary spouse can elect to be treated as employee and distributions must start on the date which the employee would have been required to take distribution

Use the Uniform Lifetime Table III which is 23.7 at age 76
(Produced as Figure 5.1)

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 173

Eligible Designated Beneficiaries

10-year applies except for eligible designated beneficiaries

1. Surviving Spouse
2. Child who is not 18
3. Disabled beneficiary
4. Chronically ill individual as defined in IRC §7702B(c)(2) and lengthy
5. Any other person not more than 10 years younger than employee

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 173

Eligible Designated Beneficiaries (EDB)

Practitioner Note:

Other Distribution Options

EDB Beneficiary may take distributions over employee's life expectancy (if longer than beneficiary)

EDB may use 10-year rule

(When would that be helpful? If they need the money.)

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 173

Eligible Designated Beneficiary determined as of date of death, no subsequent events will change the determination

Age of Majority at 21 the 10-year rule starts at the time they are no longer a minor

Disabled beneficiary standard is met at date of death

Safe Harbor is beneficiary's Social Security determination

Proposed regulations also list certain documentation to substantiate disabled or chronically ill (same definition as in IRC §7702B(c)(2))

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 174

Eligible Designated Beneficiary

Chronically ill individual as defined in IRC §7702B(c)(2)

1. Unable to perform two activities of daily living
2. Requires assistance with daily living or requires substantial supervision to protect individual from threats to health and safety dues to severe cognitive impairment

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 174

More than One Designated Beneficiary

Proposed regs if more than 1 beneficiary & 1 is not eligible, then usually the distributions must payout in 10 years

Except

1. Minor child will delay the 10-year rule
2. See through trusts for disabled or chronically ill beneficiaries

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 174

Designated Beneficiary

If not eligible, payout period is 10-years

Practitioner Note:

All must be distributed by the end of 10 years after the owner's death, The amounts are RMD and not eligible for rollover.

Unsure of the meaning of "Thus, if the 10-year rule applies with respect to a designated beneficiary, any distribution made before the tenth calendar year following the calendar year of the employee's death is eligible for rollover if it otherwise meets the requirements for a rollover."

(Notice 2023-54 Allows to have penalty free withdrawals for IRA beneficiary where the owner who died in 2020 or 2021. Ratable distributions in 2024. See Chap. 15)

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 174

Designated Beneficiary

If **not a person**, (i.e., religious organization), then 5-year rule still applies

Trusts - see through trust can be designated beneficiaries
(Then the trustee has to determine if the trust is eligible)

1. Trust is valid under state law
2. Irrevocable upon owner's death
3. Beneficiaries identifiable
4. Trustee furnishes documentation per the regs

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 174-5

Designated Beneficiary

Trusts - see through trust can be designated beneficiaries

In addition, proposed regs help determine which beneficiaries are treated as beneficiaries of the employee

Complicated trust rules - Conduit trust may only qualify for spouse and not person who only gets money from contingent death or accumulation trust unless it has a residual interest in plan

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 175

Designated Beneficiary

Trusts – **Example 5.5 Conduit Trust**

1. Ella named conduit trust as beneficiary of retirement plan
2. All distributions go to surviving spouse, Vincent
3. If he dies before all interest is distributed, any subsequent beneficiary is not treated as designated beneficiary from Ella's plan because it is contingent on Vincent's death

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 175

Designated Beneficiary

Trusts – **Example 5.6 Accumulation Trust**

1. John named see-through trust as sole beneficiary.
2. Gail receives specific payments
3. Upon death of Gail, his brother, Gene, receives the balance and trust is terminated
4. Gene is beneficiary because he has a residual interest in the trust

Practitioner Note: **Disregarded Beneficiaries**

Proposed regs – certain beneficiaries can be disregarded if they have only minimal or remote interests

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 176

Proposed regs. require that employee's beneficiaries be identifiable with modifications. Check the trust listing for each person designated to receive a portion of the employee's interest.

Adding the grandchildren born after the creation of the trust will still allow the trust to qualify as a see-through trust.

No Designated Beneficiary

Same rules for estates and non-see-through trusts, 5 years

If employee had not started withdrawals before death, 5 years

If employee had started distributions, use remaining life expectancy

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 176

Penalty for Failure to Take RMD, Form 5329

For year 2022 and before old rules apply

For year 2023 the excise tax rate is reduced to 25%

Unless the error is timely corrected, then it is 10%

The Beneficiary must take the distribution, submit the return and pay the tax within the correction window.

The correction window starts date the excise tax is imposed & ends

1. Mailing notice of deficiency
2. Date excise tax is assessed
3. last day of 2nd year that starts after end of tax year in which excise tax is imposed

ISSUE 1: REQUIRED MINIMUM DISTRIBUTIONS (RMD) P. 176

Penalty for Failure to Take RMD – Waive the penalty

IRS can waive penalty if failure was due to

1. Reasonable Error such as illness, old age, memory problems, trustee failed to notify TP AND
2. TP takes steps of set up automatic withdrawals and pay the tax

File letter with Form 5329 to explain and take corrective action.

Automatically waived if participant dies and beneficiary is determined by 5th year following year of death.