



How to Avoid a Huge Penalty If You Miss Your IRA RMDs

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Gail Buckner, CFP

FOX NEWS

Dear Gail,

My dad is 81 years old and getting increasingly forgetful. He's also had some health problems. I just discovered that he hasn't taken anything out of his [IRA](#) for the past three years.

I know there's a pretty hefty penalty for this. Is there any way he can get out of it? Dad's got some big medical bills coming in and he really can't afford to lose the money.

Thanks,
Frank

Dear Frank,

Starting no later than April 1 of the year *after* they turn age 70½, an IRA owner must start drawing down his/her account. These annual "required minimum distributions" (RMDs) are based upon the balance in the account and the IRA owner's age.

The penalty for missing an RMD is one of the most severe in the tax code: 50 percent of the amount you were supposed to withdraw. If your dad was required to take \$8,000 from his IRA one year, the penalty would be \$4,000.

The good news is that [Congress](#) has given the IRS broad latitude to waive the penalty if there is a reasonable explanation. Mary Kay Foss, a CPA in Danville, Calif., says the first thing you should do is "take out all missed distributions as soon as possible."

In other words, calculate how much your dad should have taken out for 2004, 2005 and 2006. Total these amounts and withdraw it from his IRA. (While you're at it, it's probably a good idea to also withdraw his 2007 RMD, so you don't face this problem again next year.)

Foss, a partner in the firm Marzluft, Tulis & Foss, says for each year you miss a required distribution, you will need to fill out Form 5329, which is where you calculate the penalty. You can download Form 5329 from the IRS website, www.irs.gov. Click on "More Forms and Publications," choose the form and instruction number link and then scroll down until you find it.

In the case you forget the previous year's RMD, send in a completed Form 5329 and a letter of explanation attached to your tax return for that year.

However, since your dad has probably already filed his tax return for 2006 and there are multiple years involved, you need to send all three copies of Form 5329 and a letter explaining why your dad didn't take out his required distribution for those years. (It's probably a good idea to send this "certified" mail, or some other way that provides you with proof of delivery.)

Foss suggests explaining in your note that your dad has had health problems, is forgetful, and that as soon as you realized the mistake, you took the required amount out on his behalf. Be sure to ask that the penalty be waived.

Until a couple years ago, you also had to include a check for the penalty amount when you sent in your request for a waiver.

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This is no longer required. If the IRS decides not to grant a waiver, they'll send your dad a bill.

Mail the three copies of Form 5329 and your letter of explanation to the same IRS center where your dad sends his yearly income tax return. Mark it: "Attention Customer Account Services."

Foss says it pays to go the extra mile and personalize your letter, if possible. Call the IRS processing center and see if you can get the name of the individual who will be making this decision as well as his/her mailstop. "When the IRS gets your letter, that starts the statute of limitations running. If you don't hear from the IRS in 3 years, you can assume you're OK."

According to Foss, "The biggest concern of the IRS is that the money comes out of the retirement plan. They're more interested in that than collecting 50 percent penalties."

She also suggests not waiting until the end of the year to ask your IRA custodian to send your required minimum distribution. Most RMD requests come in around the end of the year and it's easy for paperwork to get lost or for the check processing to get backed up. Foss tells clients to request their RMD on their birthday (assuming you weren't born in December) or some other significant day earlier in the year.

In my opinion, your dad's request for a waiver of the 50 percent penalty has a good chance of being approved. Keep in mind that many of the folks who work at the IRS have elderly parents, too.

Hope this helps,
Gail

If you have a question for Gail Buckner and the Your \$ Matters column, send them to: yourmoneymatters@gmail.com, along with your name and phone number.

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