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# Penalty For Missed RMDs Is Reduced; Why You Should Care

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The excise tax for a missed RMD has been reduced from 50% to 25%, with a possibility of the tax ... [+] GETTY

If you have been following my posts on required minimum distributions from [retirement accounts](#) over the last few years, I

have an important update to share with you.

RMDs are mandated IRA distributions that start at a certain age (currently age 73) – or any age for those who inherited IRAs or other tax-deferred retirement accounts. Missing all or part of an RMD is costly, due to a steep penalty (excise tax).

Now that new legislation effective in 2023 reduced the penalty by one-half, should you care?

## Congress Acts On Excise Tax

Under the SECURE 2.0 Act, which was signed into law in December of 2022, the penalty for an RMD that has been missed or not fully taken has been reduced from 50% to 25%, and “possibly 10% if the RMD is timely corrected within two years,” quoting the IRS website page [“Retirement Plan and IRA Required Minimum Distributions FAQs.”](#)

## Why the Change

What is the reason behind the change?

[A report from the House of Representatives’ Committee on Ways and Means](#) offers some insight.

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Released on March 29, 2022, nine months before the passage of the SECURE 2.0 Act, the report noted that the committee recognized that “in many cases, failures to take a required minimum

distribution are inadvertent. The Committee thus wishes to reduce the overall excise tax that applies to such failures, in particular in the case of an individual who discovers such a failure and takes steps to correct it.”

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## **An Example**

Let’s look at how the penalty change works. I’ll give you an example with this warning: Be absolutely sure to consult your tax adviser before taking any action.

“Simon,” age 80, forgets to take his \$50,000 RMD for 2023 by the due date (Dec. 31, 2023).

Before 2023, he would have been assessed a penalty of 50% on the amount of the RMD not taken – in this case, \$25,000.

Starting this year (2023), the penalty is 25%, bringing Simon’s penalty to \$12,500. And if Simon realizes his error in, say, January 2024 and takes steps to correct it by immediately taking his RMD, the penalty could be as low as \$5,000 (a 10% penalty).

The key is that Simon takes his RMD as soon as he realizes the error has occurred. Once he does, he needs to file Form 5329, “Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts,” to report the retirement account’s “excess accumulation” in Part IX, along with the penalty amount.

## Waiver Request

Simon also has the option in Form 5329 to request a waiver of the penalty due to “[reasonable cause](#).” “The IRS can waive part or all of this tax if you can show that any shortfall in the amount of distributions was due to reasonable error and you are taking reasonable steps to remedy the shortfall,” quoting the [Form 5329 instructions for reasonable cause](#).

To seek the waiver, Simon would fill out line 52 of Form 5329, the minimum required distribution for the year (in this case, \$50,000) and line 53, the amount actually distributed (zero).

For line 54, the Form 5329 instructions state “Enter ‘RC’ and the amount of the shortfall you want waived in parentheses on the dotted line next to line 54. Subtract this amount from the total shortfall you figured without regard to the waiver, and enter the result on line 54.” In this case, that would be RC and \$50,000 in parentheses next to line 54 and zero in the blank for line 54.

Line 55 calls for the additional tax on the missed RMD.

If Simon requests a waiver, he will attach a letter explaining his reasons. If the IRS approves the request, Simon could get a waiver of the penalty, which means he would owe nothing.

Note that the version of Form 5329 for the 2023 tax year, the first involving the new 25% penalty, is not out yet, according to an IRS spokesperson, who added that it's possible the reporting procedure for missed RMDs could be modified.

## Should You Care About the Change?

The change in penalties might make you feel less careful about timely taking your RMDs, but that would be a mistake.

Mark Luscombe, principal tax analyst at Wolters Kluwer, offered this advice: “While the change is a significant reduction in the potential penalty for failure to take a required RMD, a 25% penalty, or even a 10% penalty, is still very significant and should not alter, I would think, someone’s approach to taking RMDs.”

Or, if you are thinking you’ll just get a waiver of the penalty, not so fast.

“There was some concern that, with a lower penalty, the IRS might be less willing to waive penalties,” Luscombe explained. “However, in updating its frequently asked questions on required minimum distributions, the IRS left the waiver of penalty question, question 9, intact, indicating that the IRS probably plans to continue its waiver program in a manner similar to what was done in the past.”

## Consult Your Tax Adviser

What are tax advisers thinking? The reduction in the excise tax “is certainly on my mind as we begin addressing our clients’ 2023 income tax filings and planning,” said Jo Anna M. Fellon, a CPA and the National Leader of Private Client Services at **Marcum LLP**, a national accounting and advisory services firm.

This is just another one of those important regulatory changes that keeps [CPAs](#), tax lawyers, and investment advisers on their toes. The most important takeaways are these:

First, don’t assume you already know the rules. RMD rules seem to be ever-changing.

Second, always check with your tax adviser when dealing with a failed or insufficient RMD. Tax advice is always unique to the individual.

Third, don't delay.

## Questions?

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