

IRA Amendments Being Required For 2015-2016

The IRS last revised the model IRA Forms 5305, 5305-A, 5305-R and 5305-RA in March of 2002. Since then there have been numerous tax laws enacted with IRA changes. The IRS has given no written explanation as to why the IRA forms have not been amended.

We have asked a number of times when the IRS would be revising their IRA forms, but to no avail. It is not a good thing that the IRS has not updated their forms. When is it necessary for an IRA custodian/trustee to furnish an IRA amendment? Is it necessary or required to furnish one in 2016?

Each institution must make its own determination because one needs to understand when was the IRA agreement last amended and how is it being amended. A primary question is, "when is the last time the financial institution furnished an amendment?" What do the current IRA plan agreements provide? Are there some IRAs set up with one certain plan agreement and others with a different plan agreement?

One may learn a tax lesson the hard way, if he or she adopts the position that an amendment is not required because the IRS has not said one is required. One must remember that the IRS has already stated in its governing IRA regulation (1.408-6(d)(4)(ii)(C)) when an IRA amendment is required. The regulation must be followed until the IRS revises it.

There are two types of amendments – one which amends the IRA plan agreement and one which amends the IRA disclosure statement. Regulation 1.408-6(4)(ii)(C) requires that an IRA amendment be furnished no later than the 30th day after the amendment is adopted or becomes effective.

The general rule in the governing IRA regulation is – a law change is enacted which impacts a provision found in the IRA plan agreement; the provision will be amended to implement the law change and the amendment will need to be communicated to the IRA accountholder or inheriting beneficiary.

When the IRS revises its model IRA forms, the amendment is considered to be mandatory or required. When a non-IRS change is made in the plan agreement by the financial institution (or the IRA vendor), the change may either be mandatory or not.

Mandatory changes deal with the tax code changes. For example, CWF has amended the Roth IRA plan agreement so that any person with funds in a traditional IRA is eligible to convert some or all of these funds to a traditional IRA even though he or she may have MAGI of more than \$100,000.

The IRS has not yet amended its model Roth IRAs (Forms 5305-R and 5305-RA) to remove the \$100,000 restriction. And the IRS has not given any guidance as to whether or not a conversion done in 2010 or later qualifies or doesn't qualify since Form 5305-R and 5305-RA state that the custodian/ trustee may not accept a conversion contribution if the person has a MAGI greater than the \$100,000.

The standard IRS rule for IRAs/pensions has always been - the plan document must authorize the action. For this reason, even though the IRS has not amended the Roth IRA forms, CWF has. A long time ago (1986/1987) the IRS acknowledged that there are

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times that even though the IRA plan agreement has not been changed, a disclosure statement amendment must still be furnished. Example, when the deductible/nondeductible rules were first authorized in 1986/1987, such rules did not require the IRA form to be rewritten because the IRA form discusses the maximum contribution amount limit, but does not discuss the deductible/nondeductible rules. The IRS stated there needed to be a disclosure statement amendment discussing or explaining the deductible/nondeductible rules.

We at CWF have revised our IRA plan agreement forms and written the 2015-2016 IRA amendments to include the following revisions.

1. New 2016 limits impacting tax deductions and the Savers Tax Credit.
2. The three law changes made by the recent tax bill - QCD rules are now permanent; extension of special rollover period for certain airline payment; and the new SIMPLE-IRA rollover rules.
3. A reminder that an IRA distribution may disqualify a person for the premium tax credit.
4. Improved discussion of the reporting to be done by the IRA custodian to the IRA accountholder and by the IRA accountholder or beneficiary to the IRS.
5. New improved discussion of direct rollover option and rollover option for distributions from 401(k) and similar plans into a traditional IRA and/or a Roth IRA. IRS rules effective as of January 1, 2015 made it easier to move 100% basis into a Roth IRA.

In summary, answering a question whether or not an amendment is required is not simple. Each financial institution will need to make its own decision to furnish one or both amendments. It is true that the IRS has not been very active in auditing whether or not IRA custodian/trustees are furnishing IRA amendments as required by the IRA regulation.

We at CWF believe it is in the best interest of a financial institution to furnish the amendments. The governing IRA regulation provides that a \$50 fine may be assessed an institution for each time it fails to furnish the IRA plan agreement and \$50 each time it fails to furnish the IRA disclosure amendment.