IRA Amendments Being Required
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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 2013?

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 forms, CWF has. And CWF has added provisions authorizing new rollovers from 401(k) plans and other employer plans. And CWF has made other changes or amendments to adopt law changes. Other vendors have taken the approach, we don't need to amend our form because the IRS has not done so. Similar changes have been made by CWF in the traditional plan agreement forms.

Non-mandatory amendments would be made by a financial institutions for its own administrative reasons. If an institution would want such a change or changes to apply to all existing IRA accountholders or some of them, the amendment would be furnished to those accountholders which the financial institution wanted the new provision to apply. An example, in 2011/2012 CWF

added special provisions covering the topics of when a power of attorney is designated by the IRA accountholder, when a non-IRS creditor may impose a claim against an IRA, or when a trust beneficiary or an estate beneficiary will have special pass-through requests.

A long time ago (1986/1987) the IRS acknowledged that there are times that even though the IRA plan agreement has not been changed, a disclosure statement amendment must still be furnished. Example, when the deductible/non-deductible 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/non-deductible rules. The IRS stated there needed to be a disclosure statement amendment discussing or explaining the deductible/non-deductible rules.

In summary, answering a question whether or not an amendment is required is not all that simple. Sometimes the caller will furnish some additional information, but many times not. Each financial institution will need to make its own decision if there is a requirement to furnish one or both amendments or if it will furnish the amendments so there is no question.

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.