

**Lack of IRS Transparency Regarding the Requirement,
if any, to Furnish RMD Amount and Date to the IRS
on E-version of the 2014 Form 5498**

Some IRA custodians and core processors have asked the question, "is an IRA trustee (custodian) required to complete boxes 12a and 12b of the 2014 Form 5498 to report the RMD amount and RMD date?" If not required, may an IRA trustee voluntarily furnish this information?

The simple answer for the first question is, an IRA trustee is not required to furnish to the IRS a e-version of the 2014 Form 5498 with the RMD date (box 12a) and the RMD amount (box 12b) being completed. An IRA trustee may furnish this information to the IRS on a voluntary basis if it suits its business purposes and goals. CWF suggests an IRA trustee who decides to voluntarily furnish this RMD information to the IRS should have on file the customers' consent to do so. Some customers may dispute the furnishing of this information if the IRS does not have the authority to mandate that it be furnished.

Why isn't it mandatory for an IRA trustee to furnish the RMD amount and date information to the IRS?

A short tax history review is helpful. There was a major tax bill in 2001. In 2002 the IRS totally rewrote the governing regulation for required distributions. Prior to the 2003 version of the Form 5498, there was no box 11 to be checked to inform the IRS that an IRA owner was subject to the RMD rules. Box 11 was added to the 2003 version because in 2002 the IRS and Congress reached a compromise. The IRS has maintained for along time that existing law allows it to require an IRA custodian to report to the IRS information regarding required distributions. Many in Congress disagreed.

The compromise was, an IRA trustee would be required to inform the IRS that a person who is age 70½ or older (but not for an inheriting beneficiary) is subject to the RMD rules for a given year, but it was not required to furnish the RMD amount or the RMD dead-line date.

This compromise position is set forth in IRS Notice 2002-27 and the current 2014 instructions for Form 5498 and Form 1099- R. On page 19 of the 2014 Instructions for Form 5498, it is written,

Reporting to the IRS. If an RMD is required, check box 11. For example, box 11 is checked on the Form 5498 for a 2015 RMD. You are not required to report to the IRS the amount or the date by which the distribution must be made. However, see the Caution following the Box 11 instructions, later, for reporting RMDs to participants. For more details, see Notice 2002-27 on page 814 of Internal Revenue Bulletin 2002-18..

In section II of IRS Notice 2002-27, a similar statement is set forth as the required reporting of required distribution information,

Beginning with required minimum distributions for calendar year 2004, if a minimum distribution is required with respect to an IRA for a calendar year, the trustee of the IRA must indicate that a minimum distribution is required with respect to the IRA for the calendar year (but need not indicate the amount on Form 5498, Individual Retirement Arrangement Information, for the immediately preceding year (i.e. on a 2003 Form 5498 for a 2004 required minimum distribution) in accordance with the instructions for Form 5498.

The 2003-2008 versions of Form 5498 had Box 11, the RMD box. This box must be checked for any personage 70½ or older. The IRS made a major revision to the 2009 Form 5498. There were nine new boxes added: 12a-b for RMD date and amount, 13a-c for postponed contributions, 14a-b for repayments and 15a-b for other contributions.

It is clear that the IRS wants to be provided with the RMD information for various tax administration reasons. The IRS position is, the IRS need this information in order to effectively administer the tax law which imposes a 50% annual excise tax if an IRA accountholder or inheriting beneficiary fails to withdraw all of his or her RMD.

The IRS is comprised of intelligent individuals and in 2009 the IRS devised a reporting process where an IRA trustee might furnish the RMD information on a "voluntary" basis. In 2008/2009 the IRS issued guidance that an IRA trustee could furnish Form 5498 in January of the following year and it could serve triple duty; it would satisfy the requirement to furnish the Form 5498 by May31 of the following year, it would satisfy the FMV statement requirement and it would satisfy the RMD notice requirement by completing boxes 12a and 12b.

An IRA trustee must furnish a Form 5498 to the IRS and to an IRA accountholder. For the reasons discussed, it is not required that these two 5498 forms be identical. Most people might believe the forms must or should be identical. The RMD information may be furnished to the IRA accountholder, but it need not be furnished to the IRS. The IRS probably was right in thinking there will be many cases where the software will not be written to have this distinction. It is certainly simpler to provide the identical information to both the individual and the IRS.

Unless the IRS is told to do so by Congress, we at CWF don't believe the IRS will add an explanation (i.e a sentence) to Publication 1220 expressly stating as is done in the instructions for Form 5498 that "You are not required to report to the IRS the amount or the date by which the distribution must be made."

On page 4 we set forth various excerpts from pages 103 and 104 dealing with submitting data for the Form 5498. Look at field position 566-573, there is no indication that this information is "required." When required, "Required" is the first word in the General Field Description.

In the practical world, it is the core processor or the IRA service provider who will answer these questions. An IRA custodian maybe impacted because the core processor decides the way the IRS software is written and consequently may decide to furnish the RMD date and amount information to the IRS even though the IRS does not have the authority to require the IRA trustee to furnish it.

A number of core processors have come to incorrectly believe it is mandatory to furnish the RMD amount and date to the IRS on the e-version of Form 5498.

Every IRA trustee wants to understand whether its core processor is sending to the IRS the RMD date and amount information on the e-version of Form 5498. If so, you may wish to find out if the core processor has the capability of not sending the RMD data if your institution would so request.

In closing, the tax laws governing the reporting of IRA transactions are complicated and should be made simpler. We hope the IRS will make some changes to simplify things. The IRS should be more transparent and make it clear that an IRA trustee does not have the duty to report the RMD amount and the RMD date on the Form 5498, but it may be furnished to the IRS on a voluntary basis.