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Possible Tax Legislation

A number of Republican legislators have been discussing the possibility of various tax law changes which would affect IRAs and other pension plans. One of the most influential legislators is Rep. Bill Archer (R-Texas). He will most likely become the chair of the House Ways and Means Committee. He has said that he will seek the full restoration of full deductibility for IRA contributions, the repeal of the 1993 tax increase on social security benefits, a reduction in the capital gains tax rate, the indexing of capital gain assets and an elimination of the marriage penalty. Supposedly, the lost revenues, if any, would be made up from reductions in spending.

IRS Answers Two Important RMD Questions

We recently wrote the IRS to ask them two required minimum distribution questions. The IRS responded within 30 days and gave the following answers.

Situation #1. An IRA accountholder, David Bennett, attained age 70½ and 71 in 1993. He had designated his wife, Maria, as his sole primary beneficiary. He had not named any contingent beneficiaries. The IRA plan agreement indicates that his estate will be his designated beneficiary if he has not designated another beneficiary. On October 10, 1993 he visited his IRA custodian and instructed that he was electing the "nonrecalculation" method to be used with the joint life-expectancy factor. Thus, he made his election prior to his required beginning date of April 1, 1994.

His wife died on February 2, 1994. He did not inform the IRA custodian of his spouse's death prior to April 1, 1994, nor did he name a new primary beneficiary.

Question: Is he required to use a single life expectancy for his RMD calculation since he did not have a designated beneficiary as of April 1, 1994, and since his wife had died before then, or may he use a joint life-expectancy factor?

IRS' Answer: The single life-expectancy factor must be used.

Our comment: The above situation is a "be careful" situation. He was not paid as much as the law requires since the calculation was performed using a joint factor rather than the single factor. Technically, the 50% excise tax would be owing. We would expect that this is a situation where, if explained to the IRS, they would waive the assessment of the 50% excise tax.

Situation #2. Sara Gould, an IRA accountholder, attained age 70½ and 71 in 1991. She had designated as her sole beneficiary, her husband, David. David was also age 70 in 1991. On December 5, 1991, she visited her IRA custodian and instructed that she was electing the "nonrecalculation" method to be used with their joint life-expectancy factor. Sara had never designated any contingent beneficiaries. The IRA plan document provides that if there is no designated beneficiary, then the remaining funds will be paid to the estate of the accountholder (Sara). David dies in November, 1993. On January 28, 1994 Sara names her two children as the primary beneficiaries, each to receive 50%.

Question: For purposes of the 1994 and subsequent year RMD calculations, will the life expectancy factor continue to be based upon her and her husband, or must the factor switch to a single life-expectancy factor?

The reason we asked the IRS this question is because there two sections of the proposed regulation which are somewhat unclear. The two sections are Q/A E-5(c)(2) and E-5(e)(2).

Subsection (e)(2) reads as follows:

(2) If the designated beneficiary whose life expectancy is being used to calculate the distribution period dies on or after the applicable date, such beneficiary's remaining life expectancy will

Continued on page 4

IRA and Pension Year-End Reminder Bullets

- IRA accountholders must receive a written statement from the IRA custodian or trustee that shows the IRA fair market value as of December 31. This is due not later than January 31, 1995.
- Anyone wishing to establish a Qualified Plan for 1994 must have the document completed and signed no later than December 31, 1994.
- Individuals who have an IRA or are a participant in a Qualified Plan and who are over age 70½ must take their required minimum distributions for 1994 by December 31.
- The IRS Form 1099-R, used to report IRA and Qualified Plan distributions, must be sent to accountholders who took a distribution in 1994 by January 31, 1995. The 1099-R must be filed with the IRS by February 28, 1995.
- Institutions who have withheld federal income tax from IRA or Qualified Plan distributions in 1994, must report this to the IRS on the Form 945 by January 31, 1995.
- Employers who have adopted a *prototype* SEP document must amend this document by December 31, 1994.

Also in this issue –

- A Comparison of IRS Forms 945 and 941 — *Page 2*
- IRS Extends Deadline for Making QP Amendments — *Page 4*
- SEC Activities – IRAs — *Page 4*
- Social Security Contribution and Benefit Base — *Page 4*

A Comparison of IRS Forms 945 and 941

IRS Forms 945 and 941 are so similar in the manner they are completed, that a sound understanding of which withholding gets reported on each form is essential.

The reporting rules for both are virtually identical; in fact, prior to 1994, Form 941 was the only form used. The introduction of Form 945 alleviated, especially for financial institutions, the confusion of mixing funds from multiple withholding accounts.

Which Form Do You Use?

Both forms are used to report withholding. IRS Form 941 is used to report payroll's federal and FICA withholding. IRS Form 945 is used to report withholding from: (1) pensions, annuities and IRAs; (2) military retirement, (3) gambling winnings; and (4) backup withholding.

An easy guide for remembering what withholding gets reported on which form is this: all income tax withholding reported at year-end on the Form 1099 series (for example, 1099-R or Form 1099-MISC) or Form W-2G must be reported on Form 945. Income withheld from an employee's paycheck or distributions from a nonqualified pension plan are reported on Form W-2 and this withholding must be reported on Form 941.

Forms 1099 and W-2G payments	IRS Form 945
Forms W-2 payments	IRS Form 941

The comparison follows.

Who Must File?

The entity that generates the 1099, W-2G or W-2 (in other words, the payor) is the one that completes the required reporting.

IRS Form 945: You are not required to file this form until you have a nonpayroll tax liability. Once a filing has been made, you will be required to file annually until your final return (when you no longer expect any nonpayroll tax liability).

IRS Form 941: Employers who withhold income tax on wages, social security tax, or Medicare tax, must file Form 941 on a quarterly basis. File starting with the first quarter in which you are required to withhold income tax or pay wages subject to social security and Medicare taxes.

When To File

IRS Form 945: By January 31. However, if you have made deposits on time in full payment of the taxes for the year, you have until February 10 to file your return.

IRS Form 941: If you deposited all taxes when due during the quarter, you have 10 more days after the due date listed below.

Quarter	Ending	Due Date
Jan-Feb-Mar	March 31	April 30
Apr-May-June	June 30	July 31
July-Aug-Sept	Sept. 30	Oct. 31
Oct-Nov-Dec	Dec. 31	Jan. 31

Where To File

IRS Form 945: Where you file depends on whether or not you are including a payment. Address your correspondence to the Internal Revenue Service. For Form 945, see Chart A.

IRS Form 941: After filing your first return, every quarter the IRS will furnish you with a Form 941. An envelope will be provided. However, if you need the correct IRS address, it is provided in the instruction booklet for this form.

Depositing Withheld Taxes (Coupon 8109)

IRS Form 945: Prepare and deposit nonpayroll withholding using the revised Form 8109 (deposit coupon). Under "Type of Tax," darken 945. Deposit for only one type of tax with each coupon. See "Monthly vs. Semiweekly Depositor" below to understand the payment scheduling requirements.

IRS Form 941: Prepare and deposit payroll withholding using the revised Form 8109 (deposit coupon). Under "Type of Tax," darken 941. Deposit for only one type of tax with each coupon.

Chart A

Alabama, Louisiana, Mississippi
- Return without payment: Austin, TX 73301-0042
- Return with payment: PO Box 1213, Charlotte, NC 28272-1213

Arizona
- Return without payment: Austin, TX 73301-0042
- Return with payment: PO Box 7749, San Francisco, CA 94120-7749

Florida, Georgia
- Return without payment: Austin, TX 73301-0042
- Return with payment: PO Box 105092, Atlanta, GA 30348-5092

New Mexico, Texas
- Return without payment: Austin, TX 73301-0042
- Return with payment: PO Box 970018, St. Louis, MO 63197-0018

Arkansas
- Return without payment: Cincinnati, OH 45999-0042
- Return with payment: PO Box 1213, Charlotte, NC 28272-1213

Kentucky, Ohio, West Virginia
- Return without payment: Cincinnati, OH 45999-0042
- Return with payment: PO Box 5783, Chicago, IL 60680-5783

New York — Zip codes 11202 and 10008
- Return without payment: Cincinnati, OH 45999-0042
- Return with payment: PO Box 1599, Newark, NJ 07101-1599

New York — all other Zip codes, Connecticut, Maine
- Return without payment: Cincinnati, OH 45999-0042
- Return with payment: PO Box 371441, Pittsburgh, PA 15250-7441

Illinois, Iowa, Kansas, Minnesota, Missouri, Oklahoma, Wisconsin
- Return without payment: Kansas City, MO 64999-0042
- Return with payment: PO Box 9700019, St. Louis, MO 63197-0019

Indiana, Michigan
- Return without payment: Kansas City, MO 64999-0042
- Return with payment: PO Box 5783, Chicago, IL 60680-5783

Nebraska, North Dakota, South Dakota
- Return without payment: Kansas City, MO 64999-0042
- Return with payment: PO Box 7749, San Francisco, CA 94120-7749

Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia
- Return without payment: Memphis, TN 37501-0042
- Return with payment: PO Box 1599, Newark, NJ 07101-1599

North Carolina, Tennessee
- Return without payment: Memphis, TN 37501-0042
- Return with payment: PO Box 1213, Charlotte, NC 28272-1213

South Carolina
- Return without payment: Memphis, TN 37501-0042
- Return with payment: PO Box 105092, Atlanta, GA 30348-5092

Alaska, Colorado, Idaho, Montana, Nevada, Oregon, Wyoming, Utah, Washington, California — Zip codes 90053 and 95660
- Return without payment: Ogden, UT 84201-0042
- Return with payment: PO Box 7749, San Francisco, CA 94120-7749

California — all other Zip codes
- Return without payment: Ogden, UT 84201-0042
- Return with payment: PO Box 6000, Los Angeles, CA 90060-6000

If you have no legal residence or principal place of business in any state
- All returns: Philadelphia, PA 19255-0005

945-941 Comparison—*Continued from page 2*

See "Monthly vs. Semiweekly Depositor" below to understand the payment scheduling requirements.

How To File During The Year

IRS Form 945: Although it is required that you deposit withholding from nonpayroll tax according to the schedule throughout the year, Form 945 is filed annually at year-end. The filing deadline is January 31 unless you have made all your deposits during the year. If all your deposits have been made, you have until February 10 to make your annual filing. If semiweekly deposits have been made, it is also required that you complete a Form 945-A to send along with the Form 945.

IRS Form 941: Form 941 is filed quarterly through the year according to the schedule given under "When to File."

Monthly vs. Semiweekly Depositor

IRS Forms 945 and 941: Once your tax withholding exceeds $500 in any quarter, you become either a monthly or semiweekly depositor. You are determined to be a monthly or semiweekly depositor based on the amount of tax liability you accumulate. The IRS will notify you each November as to what type of depositor you are.

In general, if you reported $50,000 or less in the previous year, you will be a monthly depositor. If you reported more than $50,000 in the previous year, you will be a semiweekly depositor.

What you are determines the deadline for when you must deposit your accumulated tax liability.

A monthly depositor has until the 15th of the month following the month in which the taxes accumulated to pay their liability.

Both monthly and semi-weekly deposits are made using the deposit coupon 8109.

The semiweekly depositor must follow these deposit rules:

Chart B

Payment Days/Deposit Periods	Deposit By
Wednesday, Thursday and/or Friday	Following Wednesday
Saturday, Sunday, Monday and/or Tuesday	Following Friday

$100,000 One-Day Rule: If your liability reaches $100,000 or more on any day, you automatically become a semiweekly depositor. Once you have become a semiweekly depositor by virtue of your tax liability, you will be so for the remainder of the year and for the following calendar year.

How To File The Annual Report For Tax Liability

In completing IRS Form 945, Line 7 or IRS Form 945-A, it is important to know what is considered the liability date to use in such reporting. The liability date is the date on which the withholding occurred, not the date it is required to be deposited.

For detailed information, see instructions for Form 941 and 945. In both cases, there are penalties for late or incorrect filing of which you should be aware. Instruction booklets can be requested from the IRS by calling 800-829-3676.

Treasury Tax & Loan (TTL) Account

All 8109 deposits, either from outside employers, or from your own payroll and nonpayroll withholding accounts, go into the financial institution's Treasury Tax & Loan (TTL) account. The withholding deposited into this account is normally transferred to the Federal Reserve on a daily basis.

Completing IRS Form 945:

State Code: If you made all your deposits with a Federal Reserve bank or authorized depository located in the same state shown in your address on Form 945, **do not** make an entry in the state code box.

Line 1: Enter the income tax you withheld on pensions, annuities, IRAs, military retirement, and gambling winnings.

Line 2: Enter income tax withheld as backup withholding.

Line 3: The total of lines 1 and 2.

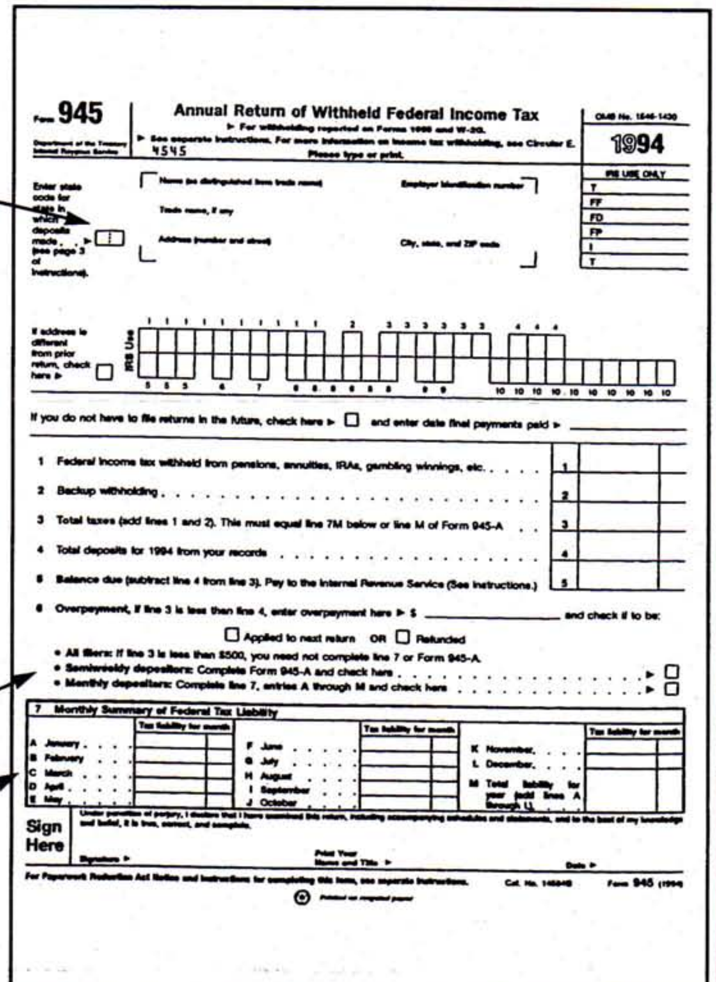
Line 4: Enter the total deposits you made during the year.

Line 5: You should have a balance due only if your total tax liability for the year (line 3) is less than $500. *If you failed to make required deposits at a qualified depository and instead pay these amounts with your return, you may be subject to a penalty.*

Line 6: If you deposited more than the correct amount for the year, you can have the overpayment refunded or applied to your next return.

If you are a semiweekly depositor, complete and furnish Form 945-A with your Form 945.

Line 7: Complete this portion if you are a monthly depositor. PD



Form 945 — Annual Return of Withheld Federal Income Tax — 1994

For withholding reported on Forms 1099 and W-2G.

See separate instructions. For more information on income tax withholding, see Circular E.

Please type or print.

Enter state code for state in which deposits made (see page 3 of instructions).

Name (as distinguished from trade name) — Employer identification number

Trade name, if any

Address (number and street) — City, state, and ZIP code

IRS USE ONLY: T, FF, FD, FP, I, T

If address is different from prior return, check here ▶

If you do not have to file returns in the future, check here ▶ ☐ and enter date final payments paid ▶

1 Federal income tax withheld from pensions, annuities, IRAs, gambling winnings, etc.

2 Backup withholding

3 Total taxes (add lines 1 and 2). This must equal line 7M below or line M of Form 945-A

4 Total deposits for 1994 from your records

5 Balance due (subtract line 4 from line 3). Pay to the Internal Revenue Service (See instructions.)

6 Overpayment, if line 3 is less than line 4, enter overpayment here ▶ $ ____ and check if to be: ☐ Applied to next return OR ☐ Refunded

• All filers: If line 3 is less than $500, you need not complete line 7 or Form 945-A.

• Semiweekly depositors: Complete Form 945-A and check here ▶ ☐

• Monthly depositors: Complete line 7, entries A through M and check here ▶ ☐

7 Monthly Summary of Federal Tax Liability

	Tax liability for month		Tax liability for month		Tax liability for month
A January		F June		K November	
B February		G July		L December	
C March		H August		M Total liability for year (add lines A through L)	
D April		I September			
E May		J October			

Sign Here — Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature ▶ Print Your Name and Title ▶ Date ▶

For Paperwork Reduction Act Notice and instructions for completing this form, see separate instructions. Form 945 (1994)

RMD Questions—*Continued from page 1*

be used to determine the distribution period whether or not a beneficiary with a shorter life expectancy receives the benefits. However, in accordance with E-8, if the designated beneficiary is the employee's spouse, the spouse's life expectancy is being recalculated, and the spouse dies, the spouse does not have any remaining life expectancy; therefore, in the calendar year following the spouse's death, the spouse's life expectancy will be reduced to zero.

Subsection (c)(2) reads as follows:

(2) If a new beneficiary who is not an individual is added or replaces a designated beneficiary after the applicable date, unless otherwise provided in D-5 and D-6, the employee will be treated as not having designated a beneficiary. Further, except as provided in paragraph (e)(2) in the case of the death of a designated beneficiary, if at any point in time after the applicable date there is no beneficiary designated with respect to the employee, the employee will also be treated as not having a designated beneficiary. In either case, the new distribution period described in subparagraph (1) will equal the period which would have been the employee's remaining life expectancy if no beneficiary had been designated as of the applicable date.

IRS' response: The joint life-expectancy factor would still be used. The authority for this is (e)(2). The IRS employee indicated he was 95% sure of this answer.

Our comment: The IRS' answer or position is one which we had hoped they would reach. The temporary absence of a primary beneficiary should not lead to the harsh result of now having to use a single life-expectancy factor in the RMD calculation. Although the IRS has given this favorable response, it should be kept in mind that the IRS response does not formally bind the IRS.

With respect to your IRA accountholders who will attain age $70^{1/2}$ in 1994 and subsequent years, the most conservative approach would still be to have these accountholders designate contingent beneficiaries in addition to primary beneficiaries as of their required beginning date.

With respect to those IRA accountholders who are already subject to the RMD rules and who have not named contingent beneficiaries and their primary beneficiary has not predeceased them, it might be desirable to have them designate contingent beneficiaries also.

IRS Extends (One More Time) the Deadline for Making QP Amendments

On December 5, 1994, the IRS issued IRS Announcement 94-136 which changes the deadlines for making QP amendments one more time.

These revised deadlines will be available to all individually designed plans, including volume submitter plans. However, the revised deadlines are available to only certain prototype plans.

Background: A qualified plan must generally be amended to comply with the Tax Reform Act of 1986 and subsequent law changes by the end of its applicable remedial amendment period which in most cases is the last day of the 1994 plan year. Thus, the deadline for a plan with a calendar plan year is December 31, 1994. However, regulation 1.401(b)-l(d)(3) provides that a plan sponsor who files a determination letter request on or before the end of the remedial amendment period will receive an extension of the deadline. The deadline will then be 91 days after the date of final disposition by the IRS, withdrawal of the request, or the date on which a decision of the United States Tax Court regarding a timely-filed petition for a declaratory judgment becomes final.

Special rules apply to certain adopters of certain prototype plans. An employer that adopts a prototype plan which is a replacement plan and that was submitted to the IRS by March 31, 1991, generally has reliance as long as the employer adopts the revised prototype within 12 months of when the IRS issued a favorable opinion letter with respect to the prototype. If the prototype plan which the employer adopts is not a replacement plan or if it was submitted after March 31, 1991, current IRS procedures require an employer to adopt the plan and to make a request for a determination letter by the end of the TRA remedial amendment period if it wishes to receive reliance.

The IRS has chosen to delay the deadline for certain prototype plans. The concept is — if the IRS has delayed in 1993 and 1994 in issuing the favorable opinion letter, then it is only fair that an employer be given a grace period in which to adopt the revised prototype document.

The extension of the deadline will not apply to most customers of CWF since their filing was made before March 31, 1991.

The deadline is extended if the following conditions are met: (1) the prototype was submitted to the IRS after March 31, 1991, but before July 1, 1994, (2) the IRS did not issue a favorable opinion letter before July 1, 1994, and (3) the employer and the prototype sponsor execute a written certification before December 31, 1994 of the employer's intent to adopt the approved prototype.

If the above conditions are met, then the deadline shall be the end of the sixth month beginning after the date the IRS issues a favorable opinion letter.

SEC Activities - IRAs

The Securities and Exchange Commission (SEC) has recently issued SEC News Release 94-105. The SEC has issued a warning to self-directed IRA accountholders to be aware that the SEC has seen an increase in fraudulent sales with respect to the sale of unregistered securities of telecommunications technology ventures. In some cases the promoters of the fraudulent schemes have falsely represented that the IRS has approved and is recommending their securities as IRA assets and that the IRS has asked them to contact the investor. The IRS, of course, does not approve specific investments and does not provide the names of IRA accountholders.

Social Security Contribution & Benefit Base

Under authority contained in the Social Security Act, the Secretary, Department of Health and Human Services has determined and announced that the contribution and benefit base for remuneration paid in 1995, and self-employment income earned in taxable years beginning in 1995 is $61,200. This is up from $60,600 in 1994.

Warmest wishes for this Holiday Season!!