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The Pension Digest

ALSO IN THIS ISSUE –

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"The Pension Specialists"

IRA Deadlines

In Announcement 2002-49, reproduced below, the IRS has extended the deadline for the required use of new IRA plan agreements to open new IRAs from 6/1/02 to 10/1/02, if the IRS model form is being used. This applies to model forms for the traditional IRA, Roth IRA, and SEP and SIMPLE IRAs. The deadline for furnishing a comprehensive amendment to existing accountholders remains 12/31/02.

Announcement 2002-49—
"In Rev. Proc. 2002-10 (2002-4 I.R.B. 401) the Service provided that existing model IRAs, SEPs and SIMPLE IRA plans may not be used after June 1, 2002, to establish new IRAs, SEPs, or SIMPLE IRA plans. In response to comments, the Service is extending the June 1 deadline to October 1, 2002. Thus, a financial institution may use an existing model IRA to establish a new IRA for a customer through October 1, 2002. Similarly, an employer may use an existing model SEP or SIMPLE IRA plan to establish such plan through October 1, 2002. The deadlines by which revised model forms must be adopted under Rev. Proc. 2002-10 are unchanged."

The above information was officially released in the Internal Revenue Bulletin dated May 13, 2002.

CWF will soon have all revised forms available in both the paper version and on our Platform. If you have ordered plan agreements, amendments, or other forms, we will be shipping them to you by the end of June at the latest, and many will be able to be shipped much sooner.

At one time, CWF had thought that IRA custodians would be required to obtain accountholder signatures to adopt the comprehensive amendment. However, after consulting with the IRS, they have confirmed to CWF that, generally, a comprehensive amendment may be provided to the accountholder and no signature is required.

SEP and SIMPLE amending—
Although a comprehensive amendment is permissible for a traditional IRA which is created under a SEP, CWF has not written a comprehensive amendment for either Form 5305-SEP or for SIMPLE IRAs. Customers will need to execute and sign new documents.

All SEP prototypes must be revised by 12/31/02. CWF will be submitting its revised document to the IRS within the next 60-90 days. We will be contacting our SEP prototype customers soon concerning this amending process.

What's New in the Final RMD Regulation

The final RMD regulations adopt the rules as proposed by the IRS in January of 2001 with some clarifications and transitional rules as follows:

1. The final regulations contain new single and joint life-expectancy tables. In addition, the uniform lifetime table (formerly the MDIB table) reflects these new tables. EGTRRA contained a specific section instructing the Secretary of the Treasury to change the life-expectancy tables used for RMD purposes to reflect current life-expectancy. Life expectancies have improved since the issuance of the 1987 tables. In general, the 2002 factors are, on average, 1.0 larger than they were for 1987.

2. We all know the RMD calculation uses the December 31 balance as adjusted, divided by a life-expectancy factor. The final regulation simplifies determining this adjusted balance by greatly limiting the adjustments. There will now be only two

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adjustments (i.e. add backs):
(1) outstanding rollovers and transfers; and
(2) recharacterizations related to the calculation tax year.

Under the 1987 and 2001 rules, problems developed because the IRS started to increase the additions to the December 31 balance. The 1987 proposed regulation expressly required (for RMD calculations) that a qualified plan adjust the balance for any contributions designated for the prior year. The IRA regulation, as written, did not require any such adjustment. The IRA regulation only required adjustment for outstanding rollovers and transfers, and the special exception when an IRA accountholder exercised his or her right to take the first year's RMD during January 1 to April 1 of the second year. Problems arose because the IRS personnel in charge of writing the Publication 590 expanded the rule to require that any carryback contributions (i.e. contributions designated for the prior tax year) for a traditional IRA and a SEP IRA were to be added to the December 31 balance.

3. The final regulation provides a special rule for IRA transfers. The general rule for qualified plans is that one may not transfer an RMD. However, IRAs are given special treatment because of the special rule which allows an IRA accountholder or beneficiary to aggregate all of his or her like-kind IRAs and then take the distribution from only one of the aggregated IRAs. Prior to this final regulation, the IRS has never, in writing, explained how these two rules coordinate. They now do. The transferor IRA will be able to transfer the entire IRA balance and will not be required to retain or payout the RMD for the given year.

4. The final regulation provides different rules as to when a determination is made that a spouse is a decedent's sole beneficiary and is more than 10 years younger. Under the 2001 proposed regulation, this determination was made as of December 31.

   As proposed, the Joint Table was available only if the spouse was the sole beneficiary of the IRA accountholder's interest at all times during the year. This meant the Joint Table could not be used if the couple was divorced during the year, the spouse beneficiary died during the year or an additional beneficiary was designated during the year.

   The final regulation for RMD calculation purposes also clarifies what happens if there is a change in marital status after January 1. If the accountholder's spouse would die after January 1, or the accountholder is divorced after January 1, the accountholder will still be treated as married for such year. However, the accountholder would not qualify to use the Joint Table for subsequent years unless he or she would re-marry and qualify again under the special rule.

   Note that the final regulation still provides that if the IRA accountholder designates a person to be his or her beneficiary other than his or her spouse or an additional beneficiary during the year, the uniform lifetime table will be required to be used, and not the Joint Table. This means a person's RMD amount will need to be recalculated and it will be a larger amount.

5. The IRS lessened for the time being the reporting duties of the IRA custodian. In the 2001 proposed regulation, the IRS had stated that the IRA custodian would be required to annually inform both the IRA accountholder and the IRS of the required minimum distribution amount. In the final regulation, the IRS changes what is required of the IRA custodian.

   The new rules apply beginning with the RMD's required for 2003.

   With respect to the IRA accountholder, the final regulation gives the IRA custodian two alternatives. First, the IRA custodian will be required to inform an IRA accountholder what his or her required minimum distribution amount is for each year and the date by which such amount must be distributed. Secondly, the IRA custodian may choose to inform the IRA accountholder that he or she must take an RMD with respect to a specific IRA plan agreement for a given year and the date by which such amount must be distributed, offer to calculate the RMD amount upon request, and then provide the RMD amount, if requested.

   With respect to the IRS, the IRA custodian, beginning in 2004, must, on an annual basis, indicate on the form 5498 if an RMD is due with respect to this IRA. Under the final rules, the IRS is not requiring the IRA custodian to report the RMD amount to them. If the IRS determines that too many IRA accountholders are still not complying with the RMD rules, then the IRS may well change this requirement.

   One other change is worth mentioning. In the 2001 proposed regulation, the IRS would have required the IRA custodian to inform the IRA accountholder that he or she could use the alternative or aggregate method and take the RMD amount for his or her IRA from another IRA. This requirement was removed from the final regulation. Although the IRS will not require this notification, we would suggest that an IRA custodian still furnish this notification.

6. The right of a surviving spouse to elect to treat the deceased spouse's IRA as his or her own is a valuable right. The final regulations clarify the following.

   There is no RMD for the year of death when the accountholder dies before his or her required beginning date. Thus, if the accountholder dies during the year he

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or she attains age 70 1/2, the surviving spouse will not need to take any distribution, because no RMD is required, since the accountholder died before his or her required beginning date.

Under the 2001 proposed regulation, this spousal election was only permissible if the decedent's RMD, if any, for the year of death had been distributed. The final regulation states that this election may be made at any time after the accountholder's death. This appears to mean that the surviving spouse will be able to elect to treat the deceased spouse's IRA as his or her own even though the RMD amount has not yet been distributed. It will need to be distributed by December 31.

It is clarified that the RMD for the year of death is calculated as if the IRA accountholder had lived the entire year. This clarification should not have been necessary, as the RMD calculation is made as of January 1 of each year.

It is also clarified that the surviving spouse is required to receive a minimum distribution for the year of the spouse accountholder's death only to the extent that such amount had not been paid to the accountholder prior to his or her death.

7. It is also clarified that even though a spouse beneficiary does not have the right to elect to treat his or her deceased spouse's IRA as his or her own because he or she is not the sole beneficiary or for some other reason, the spouse may still roll over his or her share as long as the standard rollover rules are satisfied.

8. The date for determining the designated beneficiary has been changed to September 30 of the year following the year of the IRA accountholder's death rather than December 31 of such year as provided under the 2001 proposed rules. This deadline for determining the IRA accountholder's designated beneficiary(ies) is coordinated with the trust documentation requirements.

   The period between the accountholder's death and September 30 is a period during which beneficiaries can be eliminated, but not replaced. A designated beneficiary will be eliminated for purposes of determining who is a designated beneficiary if he or she withdraws his or her entire share or executes a valid disclaimer pursuant to Code section 2518.

   A designated beneficiary will qualify as such only if he or she had been designated as a beneficiary by the IRA accountholder as of the date of death or by the IRA plan document. The fact that the estate was expressly designated the beneficiary or the estate became the beneficiary by operation of law or by operation of the plan document, does not have the result that the beneficiary of the accountholder's IRA as named under his or her will (or by application of state law) will be considered the beneficiary for purposes of determining the applicable distribution period.

   Remember that if the accountholder dies before his or her required beginning date without having designated a living person as his or her beneficiary, then the five-year rule must be used, as the life-expectancy alternative is not available. And remember that if the accountholder dies on or after his or her required beginning date, the distribution period is based on the deceased accountholder and not a living accountholder.

9. A transition rule is provided for those trusts which for some reason failed to comply with one or more of the trust documentation requirements. If the date for providing this trust documentation was or is before October 31, 2003, then such documentation may be provided to the IRA custodian or trustee until October 31, 2003.

10. Another transition rule will permit those beneficiaries who are subject to the five-year rule when the IRA accountholder has died before his or her required beginning date to be able to switch to the life-expectancy rule by the earlier of December 31, 2003 or December 31 of the year containing the fifth anniversary of the accountholder's death. Some beneficiaries were subject to the five-year rule because they affirmatively elected it, while others were subject to it because the IRA plan agreement provided for the five-year rule as the default rule. There are beneficiaries who may well wish to take advantage of this transition rule.

    This transition rule will only apply if the accountholder died on or after January 1, 1997. If the accountholder died during 1997, any beneficiary subject to the five-year rule will be able to elect the life-distribution rule if they do so by December 31, 2002, since this is earlier than December 31, 2003. If the accountholder died during 1998, any beneficiary subject to the five-year rule will be able to elect the life-distribution rule if they do so by December 31, 2003. If the accountholder died during 1999 or later, any beneficiary subject to the five-year rule will need to elect the life-distribution rule by December 31, 2003, since this date will be earlier than the December 31 containing the fifth anniversary of the date of death. However, all amounts that would have been distributed, if the life expectancy rule had been the original election, must be distributed within the same deadlines.

    The following chart summarizes the deadlines for those beneficiaries wishing to switch from the five-year rule to the life-distribution rule:

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Year of Accountholder's Death	Deadline to Switch From 5-Yr. Rule To the LE Rule
1997	12-31-02
1998	12-31-03
1999	12-31-03
2000	12-31-03
2001	12-31-03
2002	12-31-03

11. The final regulation clarifies what happens if an individual designated as a primary beneficiary survives the accountholder, but dies before September 30 of the year following the year of the IRA accountholder's death. This deceased beneficiary will continue to be considered the designated beneficiary for purposes of determining the distribution period, rather than any successor beneficiary.

12. The general rule since 1987 has been that if more than one individual is designated as a beneficiary as of the determination date, then the beneficiary with the shortest life-expectancy will be the designated beneficiary for purposes of determining the distribution period. However, special rules apply if an entity other than an individual is designated as a beneficiary, and when the IRA is divided into separate accounts.

    The final regulations clarify a number of things about separate accounts.

    In order to determine the distribution period for the separate account by disregarding the beneficiaries of the other separate account(s), the separate account must be established by December 31 of the year following the year of death.

    Although an IRA accountholder may, at any time, create an IRA with separate accounts, for purposes of determining RMDs with respect to an inherited IRA, separate accounts are only recognized after the later of: (1) the year of the IRA accountholder's death or (2) the year the separate accounts are established.

    It is permissible to have separate investments for each separate account once the separate accounts have been established.

    For the period after the death of the accountholder but prior to the establishment of the separate accounts, there must be an allocation of all post-death gains and losses to the separate accounts on a pro-rata basis, applied on a reasonable and consistent basis.

    There must also be allocated any post-death distribution to the separate account of the specific beneficiary receiving the distribution.

13. Both the 2001 and the final 2002 regulation contain an automatic waiver of the 50% excise tax under Code section 4974. Under the final regulation, this tax will be waived, unless the Commissioner would determine otherwise, if: (1) the accountholder died before his or her required beginning date, the beneficiary is the sole beneficiary, and the life-expectancy rule is in effect to calculate the RMD's and (2) the inherited IRA is completely distributed to the beneficiary by December 31 of the fifth year containing the anniversary of the IRA accountholder's death.

14. These new single and joint life-expectancy tables may be used for substantially equal periodic distribution schedule calculation purposes in addition to RMD purposes. For example, the amortization method will now be able to use the distribution period provided by these new tables. The same is true for the 401(a)(9) method, even though such payments are not equal, but they are treated as substantially equal if the life-expectancy is determined in a consistent manner.

    The IRS has said that an IRA accountholder may change an existing payout schedule by using the new tables rather than the old tables. The IRS is so willing to do this because the use of the new tables with the larger life expectancies will generally mean the distribution amount will be smaller. Some people may wish to take a smaller distribution, and this final regulation will allow them to do so. Such a change to an existing schedule will not be considered to have been modified for purposes of the recapture taxes.

Reporting Required Minimum Distributions From IRAs

Notice 2002-27
Purpose

This notice provides guidance on the reports that trustees, custodians, and issuers are required to make with respect to required minimum distributions from individual retirement accounts and annuities (IRAs).

Background

Section 401(a)(9)(A) of the Internal Revenue Code provides rules for required minimum distributions from qualified plans during the life of an employee and § 401(a)(9)(B) provides rules for required minimum distributions after the death of an employee. Section 408(a)(6) and (b)(3) provides that rules similar to the rules of § 401(a)(9) apply to IRA distributions. Under § 401(a)(9)(C), the required beginning date for an IRA owner is April 1 of the calendar year following the calendar year in which the owner attains age 70 1/2.

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Section 408(i) provides that the trustee of an IRA shall make reports regarding such accounts as the Secretary may require.

Proposed regulations under §§ 401 (a)(9) and 408(a)(6) and (b)(3) were published in January 2001 (REG-130477-00; REG-130481-00, 2001-1 C.B. 865). The proposed regulations, which substantially simplified the rules for determining required minimum distributions, provided that the trustee, custodian, or issuer of an IRA is required to report the amount of required minimum distributions from an IRA in accordance with IRS forms and instructions. For purposes of this notice, the term "trustee" includes a trustee, custodian, and an issuer of IRAs. The preamble to the proposed regulations described a process under which the IRS would be receiving public comments and consulting with interested parties in order to evaluate how to implement a reporting requirement that would provide the most useful information to the IRA owners and beneficiaries while minimizing the burden on IRA trustees.

The IRS has received a number of comments regarding the reporting requirement in the proposed regulations and the comments have been taken into account. Final and temporary regulations under §§ 401(a)(9) and 408(a)(6) and (b)(3) were published at 67 F.R. 18988 (Apr. 17, 2002). These regulations are effective January 1, 2003.

Section 1.408-8, Q&A-10, of the new regulations provides that the trustee of an IRA is required to report information, with respect to the amount required to be distributed from the IRA for each calendar year, to individuals or entities, at the time, and in the manner, prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin as well as in federal tax forms and accompanying instructions. This notice is being issued in conjunction with those regulations and pursuant to this delegation of authority to require reporting with respect to required minimum distributions from IRAs.

The reporting provisions in this notice are intended to assist taxpayers in complying with the minimum distribution requirement. However, the Treasury and the IRS continue to have concerns about the overall level of compliance in this area and intend to monitor the effect of the new reporting regime on compliance to determine whether it would be appropriate to modify the regime in the future.

Although reporting of a required minimum distribution applies with respect to each IRA, the IRA owner may take the required minimum distribution from another IRA of the owner to the extent permitted under Q&A-9 of § 1.408-8.

Reporting
I. Required Reporting to the IRA Owner

If a minimum distribution is required with respect to an IRA for a calendar year and the IRA owner is alive at the beginning of the year, the trustee that held the IRA as of December 31 of the prior year must provide a statement to the IRA owner by January 31 of the calendar year regarding the required minimum distribution in accordance with either of the two alternatives in this section. This requirement is effective beginning with required minimum distributions for 2003 (so that the first reports are due January 31, 2003).

Alternative one. An IRA trustee furnishes the IRA owner with a statement of the amount of the required minimum distribution with respect to the IRA for the calendar year and the date by which such amount must be distributed. The amount is permitted to be calculated assuming that the sole beneficiary of the IRA is not a spouse more than 10 years younger than the IRA owner and that no amounts received by the IRA after December 31 of the prior year are required to be taken into account to adjust the value of the IRA as of December 31 of the prior year for purposes of determining the required minimum distribution pursuant to Q&A-7 or Q&A-8 of § 1.408-8.

Alternative two. An IRA trustee provides a statement to the IRA owner that: (1) informs the IRA owner that a minimum distribution with respect to the IRA is required for the calendar year and the date by which such amount must be distributed and (2) includes an offer to furnish the IRA owner, upon request, with a calculation of the amount of the required minimum distribution with respect to the IRA for that calendar year. If the IRA owner requests such a calculation, the IRA trustee must calculate the required minimum distribution for the IRA owner and report that amount to the IRA owner. Under both alternatives, the statement must also inform the IRA owner that the trustee will be reporting to the IRS, beginning with required minimum distributions for calendar year 2004, that the IRA owner is required to receive a required minimum distribution for the calendar year. (See section II below.) The statement can be provided to the IRA owner in conjunction with the statement of the fair market value of the IRA as of December 31 of the prior year that is otherwise required to be provided to the IRA owner by January 31 of a year.

If the surviving spouse of a deceased IRA owner elects to treat an IRA for which the spouse is the sole beneficiary as the spouse's own IRA by redesignating the IRA as an account in the name of the spouse as IRA owner rather than as beneficiary, the IRA trustee reports information on the required minimum distribution to the surviving spouse under the IRA owner rules in this section I. If the spouse is the sole beneficiary of an IRA of a deceased owner but has not affirmatively redesignated the IRA as the spouse's own IRA, the IRA trustee is permitted to assume that the surviving spouse of the deceased IRA owner has not elected to treat the IRA as the spouse's own IRA and continues to be treated as a beneficiary for purposes of § 401(a)(9).

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II. Required Reporting to the IRS

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.

III. No Reporting for Section 403(b) Contracts and IRAs of Deceased Owners

Section 1.403(b)-3 provides that a section 403(b) contract is treated as an individual retirement plan for purposes of satisfying the required minimum distribution rules. Consequently, the delegation of authority to require reporting for IRAs also applies to section 403(b) contracts. However, no reporting is required at this time with respect to required minimum distributions from section 403(b) contracts.

Reporting is also not required at this time with respect to IRAs of deceased owners. Accordingly, no reporting is required for Roth IRAs because there are no lifetime minimum distributions required for Roth IRAs. If reporting is required in the future for section 403(b) contracts or IRAs of deceased owners, the IRS will issue additional guidance, which will be effective prospectively.

IV. Application for Years After 2003

This notice provides the reporting rules for required minimum distributions for calendar year 2003. For required minimum distributions for calendar years after 2003, these rules apply except to the extent modified in federal tax forms and accompanying instructions.

Paperwork Reduction Act

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. section 3507) under control number 1545- 1779.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collection of information in this notice is in the section titled "REPORTING." This information is required to inform IRA owners of their required minimum distributions for the year. The likely respondents are (1) businesses or other for-profit institutions and (2) not-for-profit institutions. The estimated total annual reporting burden is 1,170,000 hours.

The estimated annual burden per respondent varies from 4 minutes to 20 hours, depending on individual circumstances, with an estimated average of 15 hours. The estimated number of respondents is 78,000.

The estimated annual frequency of responses is one.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

SIMPLE Distribution when Two-Year Requirement Not Met

An individual has participated in a SIMPLE for less than two years. He/she now wishes to take a distribution for a first-time home purchase. Will this individual owe the 25% or 10% additional tax on the distribution?

The general rule of Code section 72(t) is that any taxpayer who receives a premature distribution from a qualified retirement plan (including IRAs) must pay, in addition to the regular tax, an amount equal to 10% of the amount of the distribution which must be included in income. Because the 10% tax applies only if the distribution must be included in income, it does not apply to amounts rolled over, the return of most excess contributions, or the return of nondeductible contributions. There are no special rules for SIMPLEs except that the 10% additional tax is increased to 25% if the distribution is taken within the first two years of participation in the plan.

However, there are 10 exceptions, when, if met, the funds may be withdrawn from an IRA without owing additional tax. Please note: even though these exceptions refer to traditional IRAs, they also apply to SIMPLE IRAs.

The most important exception is that no penalty will be owing if a distribution is made on or after the date on which the IRA accountholder attains age 59 1/2.

The exception in question in the above situation is the first-time homebuyer exception.

The fact that the individual has not participated in the SIMPLE for a full two years has no bearing, if the individual otherwise qualifies under the first-time home buyer exception.

Beginning in 1998, distributions from an IRA that are qualified first-time homebuyer distributions will not be subject to the 10% or 25% premature distribution penalty tax. Qualified first-time homebuyer distributions are distributions from an IRA which are use to pay the qualified acquisition costs of the principal residence of the first-time homebuyer.

The first-time homebuyer can be the individual accountholder, the accountholder's spouse, child, or grandchild, or any ancestor of the accountholder or the accountholder's spouse. To qualify as a first-time homebuyer, the individual, and, if married, the individual's spouse, must not have had any ownership interest in a principal residence for the two-year period ending on the date of acquisition of the principal residence being purchase under this exception. The date of acquisition is defined as the date a binding

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contract to purchase the residence is entered into, or the date on which construction or reconstruction of the residence begins.

Qualified acquisition costs include the cost of acquiring, constructing, or reconstructing a residence. The term also includes any usual and reasonable settlement, financing and closing costs. The funds that are distributed for the first-time home purchase must be used to pay the qualified acquisition costs within 120 days of the date of the distribution from the IRA.

If there is a delay or cancellation of the purchase or construction of the residence and the distributed amount is recontributed, i.e. rolled over, within the 120-day period, there will be no income tax or penalty tax consequences. This is a change from the normal 60-day rollover rule. Careful documentation will be necessary to insure compliance with these rules. If the funds are not recontributed within this time period, the amount will be taxable and subject to the 10% or the 25% premature distribution penalty.

An individual is limited to $10,000 under this exception for the individual's lifetime. While a person may be able to use this exception more than once in their lifetime, the total lifetime distributions that can fall under this exception is $10,000. The $10,000 limitation applies to the individual from whose IRA the funds are distributed, whether the funds are used by the individual or the individual's children, grandchildren, or ancestors.

Summary. There will be no penalty owing in this situation if the first-time homebuyer meets the qualifications listed above. If no exceptions would apply, then, in general, a SIMPLE distribution taken within the first two years of participation would result in the 25% penalty being assessed. After the two-year participation requirement is met, the penalty would be 10% if no exception applied.

The other eight exceptions are listed below.

1. Distributions made to a beneficiary or estate of an IRA accountholder.
2. Distributions to a disabled accountholder. Proof of disability must be furnished to claim this exception.
3. A distribution made in the form of substantially equal periodic payments.
4. Medical Expenses. Beginning in 1997, to qualify for this exception, the dollar amount of the expense must be greater than 7.5% of an individual's adjusted gross income for the year (in other words, it must qualify as an itemized deduction on Schedule A, Form 1040), if the individual is under age 59 1/2.
5. Health Insurance Premiums. Beginning in 1997, if the distribution is used to pay health insurance premiums after a person has become unemployed, the 10% additional tax will not be owing. However, the person must have been receiving unemployment benefits for at least 12 consecutive weeks, and the distribution must occur in either the year the person received the unemployment benefits or during the next tax year. This exception no longer applies once a person is reemployed for a period of at least 60 days. Self-employed persons may also use this exception if they would be eligible for unemployment benefits except for the fact that they are self employed.

6. Educational Expenses. Beginning in 1998, distributions made from an IRA will not be subject to the 10% premature distribution penalty tax if they are used to pay qualified educational expenses of the accountholder, the accountholder's spouse, children, or grandchildren.

   Qualified educational expenses include tuition, fees, books, supplies, and equipment required for enrollment or attendance at an eligible educational institution. This amount may also include, for students who are carrying at least one half of the normal full-time course load, reasonable expense amounts incurred for room and board.

   An eligible educational institution is generally any accredited college, university, junior college, community college, or postsecondary vocational institution.

   The amount of education expenses for which a distribution from an IRA can be used and not be subject to the penalty under this exception must be reduced by the amount of any qualified scholarship, educational assistance allowance, or payment that is excludable from gross income.

7. IRS levies from IRAs are no longer subject to the premature distribution excise tax. For all IRS levies after July 22, 1998, the Code section 72(t) excise tax no longer applies. This exception does not apply to levies on other Qualified Retirement Plans.

8. Funds withdrawn from a SIMPLE IRA and converted to a Roth IRA are not subject to the 25% or the 10% additional tax unless a recapture tax would apply.

Note: Distributions made under these exceptions will still be subject to ordinary income tax. Taxation rules differ for Roth and Coverdell Education Savings Accounts.

Filing of Form 8851, Summary of Archer MSAs, Extended to Calendar year 2002

Announcement 2002-52—
As a result of the Job Creation and Worker Assistance Act of 2002, public Law 107-147, the filing of Form 8851, "Summary of Archer MSAs," was extended into calendar year 2002.

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01. The most current electronic/magnetic filing procedures are found in Revenue Procedure 2001-31, printed in Internal Revenue Bulletin 2001-20, dated May 14, 2001.

02. The due date for filing paper returns with the IRS also applies to electronic and magnetic media filing. File Form 8851, postmarked no later than August 1, 2002, to report the number of Archer MSAs you established from January 1, through June 31, 2002.

03. All correspondence, paper forms and media relating to Form 8851 should be sent to:

IRA-Martinsburg Computing Center
Information Reporting Program
Attn: 8851 Coordinator
240 Murall Drive
Kearneysville, WV 25430

04. A list of the acceptable media and methods of filing Form 8851 are as follows:

— Electronic Filing —FIRE System
— Magnetic Tape
— Tape Cartridge
— 8mm, 4mm, and Quarter Inch Cartridges (QIC)
— 3 1/2 inch Diskette

Note: Beginning in January 2003, IRS/MCC will no longer accept 9-track magnetic tape for the filing of Form 8851. Beginning in January 2004, 8mm, 4mm or Quarter Inch Cartridges (QIC) will no longer be acceptable.

05. The information Reporting Program (IRP) Call Site was reorganized and is now the IRP Customer Service Section. The IRP Customer Service Section continues to assist filers via a toll-free number and e-mail with information return issues. The new toll-free number is 866-455-7438. The toll-free number can only be used within the United States. Filers may continue to use the original telephone number, 304-263-8700 or TTY/TDD 304-267-3367 (not toll free). E-mail may be sent to *mccirp@irs.gov*. Hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., Eastern time.

IRS Instructions for Form 5498 Are Confusing

On the IRS Form 5498 for 2000, Box 4 listed the Fair Market Value of the account. On the 2001 Form 5498, the IRS added a box titled "Recharacterized contributions." This new box was numbered Box 4, and the box entitled "Fair Market Value" was moved to Box 5.

The IRS instructions for 2001 and 2002 state:

Box 7. Checkboxes —"If you did not enter an amount in box 1, 3, 8, 9, 10, or 11 even if you entered an amount in ***box 2 or 4****, you must mark the appropriate box. If you entered an amount in box 1, 3, 8, 9, 10, or 11 you may, but you do not have to, mark the appropriate box."*

In their instructions for Checkbox #7 for 2001 and 2002, the underlined "box 2 or 4" above should read "box 2 or 5." The IRS did not take into account that box 4, the "Recharacterized contributions" box resulted in the 2001 Form's Box 4 to now be Box 5. Therefore all references to Box 4 in this paragraph of the instructions really refer to Box 5.

Therefore, the IRS meant to say that if you only enter an amount in Box 2 or Box 5, you must check the type of IRA in Box 7. If an amount is entered in boxes 1, 3, 8, 9, 10, or 11 (on the 2001 Form 5498), the IRS knows what type of IRA it is, and, therefore, the type of IRA as listed in Box 7 does not need to be checked.

Obviously, when the new box was added, the IRS should have modified the instructions for Checkbox #7 to reflect the change. Technically, the instructions should read box 2, 4, or 5 in the above quote to be completely accurate. Because boxes 2, 4, and 5 do not identify the type of IRA for which the form is being prepared, Box 7 must be completed to reflect the correct type of IRA.

We are sending this article to the IRS and requesting that the instructions be modified accordingly.

Excess Contribution Withdrawal Deadline Extended

Special Rule. The IRS has apparently adopted a rule for correcting current-year and excess contributions very similar to the one which it has adopted with respect to recharacterizations. This special rule is set forth in the instructions for Form 8606. You will have 6 months from the due date of your tax return to withdraw an excess contribution plus the related income (or less any loss). For most taxpayers this is October 15 of the following year. The effect of this special rule is that the deadline for correcting an excess contribution (or a current-year contribution) becomes October 15 of the following year rather than April 15 of the following year plus extensions. The effect of your withdrawal on or before October 15 of the following year is that the contribution is treated as if it had never been contributed. You are still required to withdraw the related income, and you will need to include it in your income for the year in which the contribution is made. You should discuss this special rule with your tax advisor or consult the IRS' instructions, as the rules are complicated. If you have already filed your tax return for such year, then you will need to file an amended return with "Filed pursuant to section 301.9100-2" written at the top.