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ALSO IN THIS ISSUE –

Collin W. Fritz and Associates, Inc.,
"The Pension Specialists"

The Account Number Requirement for Forms 1099-R and 5498

Prior to 2005, an IRA custodian's duty to furnish an account number was optional with respect to the reporting forms 1099, 1098, 5498, and W-2G. Beginning with the 2005 forms, the IRS made it mandatory, in some situations, for the financial institution to furnish an account number. The IRS has made it clear, however, that even though furnishing an account number may not be mandatory, the IRS wants the filer to furnish a "unique" account number with respect to each form which is filed.

When is it mandatory to to complete the box asking for an account number on the Form 1099-R and Form 5498? It is now mandatory to complete the account number box any time a person has more than one IRA plan agreement with the same financial institution. The account number box will need to be completed if a person has two or more traditional IRAs, two or more Roth IRAs, or a person has two or more of any of the following types of IRAs — traditional, Roth, SEP-IRA or SIMPLE-IRA.

For the IRA reporting forms, the IRS has always required that transactions are to be reported on a "per-IRA-plan-agreement" basis. For example, if Jane Doe has two traditional IRA plan agreements, then two 5498 forms will need to be prepared to report the respective contribution activity and the fair market value as of December 31. In like manner, if Jane withdrew funds from both IRAs, then two Form 1099-Rs will need to be prepared.

It appears that there are some processors and software providers who are unaware of this change.

What has the IRS written about the account number requirement? With respect to the 2005 Form 1099-R, the IRS has written the following on page R-6 of the 2005 Instructions for Forms 1099-R and 5498:

> **Account Number**
>
> The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 1099-R. Additionally, the IRS encourages you to designate an account number for all Forms 1099-R that you file. See part P in the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.

With respect to the 2005 Form 5498, the IRS has written the following on page R-14 of the 2005 Instructions for Forms 1099-R and 5498:

> **Account Number**
>
> The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 5498. Additionally, the IRS encourages you to designate an account number for all Forms 5498 that you file. See part P in the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.

In Part P of the General Instructions for Forms 1099, 1098, 5498, and W-2G, the IRS has written the following:

> **P. Account Number Box on Forms**
>
> Use the account number, when provided, on Forms 1099, 1098, 5498, and W-2G for an account number designation. The account number is required if you have multiple accounts for a recipient for whom you are filing more than one information return of the same type. Additionally, the IRS encourages you to include the recipient's account number on paper forms if your system of records uses the account number rather than the name or TIN for identification purposes. Also, the IRS will include the account

Continued on page 2

Account Number Requirements, Continued from page 1

number in future notices to you about backup withholding. If you are filing electronically or magnetically, see Pub. 1220. (Underlining was added by CWF.)

The account number may be a checking account number, savings account number, serial number, or any other number you assign to the payee that is unique and will distinguish the specific account. This number must not appear anywhere else on the form, and this box may not be used for any other item unless the separate instructions indicate otherwise. Using unique account numbers ensures that corrected information returns will be processed accurately.

If you are using window envelopes to mail statements to recipients and using reduced rate mail, be sure the account number does not appear in the window. The Postal Service may not accept these for reduced rate mail.

CWF Observation. The underlined provision makes the statement that "The account number is required if you have multiple accounts for a recipient for whom you are filing more than one information return of the same type." We have been asked if this means that the account number is not required if a person has one traditional IRA and one Roth IRA, because they are not of the same type. Our answer is, "No." Since you will be preparing two Form 5498s, you must furnish the account number. The "same type" refers to the type of reporting form being filed, and not the type of IRA account.

The 2005 Forms 1099-R and 5498 are reproduced below.

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, and ZIP code		1 Gross distribution $ 2a Taxable amount $	OMB No. 1545-0119 2005 Form 1099-R	**Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.**
		2b Taxable amount not determined ☐	Total distribution ☐	**Copy 1 For State, City, or Local Tax Department**
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a) $	4 Federal income tax withheld $	
RECIPIENT'S name		5 Employee contributions or insurance premiums $	6 Net unrealized appreciation in employer's securities $	
Street address (including apt. no.)		7 Distribution code(s) IRA/SEP/SIMPLE ☐	8 Other $ %	
City, state, and ZIP code		9a Your percentage of total distribution %	9b Total employee contributions $	
Account number (see instructions)		10 State tax withheld $ $	11 State/Payer's state no.	12 State distribution $ $
		13 Local tax withheld $ $	14 Name of locality	15 Local distribution $ $

Form **1099-R** Department of the Treasury - Internal Revenue Service

☐ CORRECTED (if checked)

TRUSTEE'S or ISSUER'S name, street address, city, state, and ZIP code		1 IRA contributions (other than amounts in boxes 2–4 and 8–10) $ 2 Rollover contributions $	OMB No. 1545-0747 2005 Form 5498	**IRA Contribution Information**
TRUSTEE'S or ISSUER'S Federal identification no.	PARTICIPANT'S social security number	3 Roth IRA conversion amount $	4 Recharacterized contributions $	**Copy B For Participant**
PARTICIPANT'S name		5 Fair market value of account $	6 Life insurance cost included in box 1 $	This information is being furnished to the Internal Revenue Service.
Street address (including apt. no.)		7 IRA ☐ SEP ☐	SIMPLE ☐ Roth IRA ☐	
City, state, and ZIP code		8 SEP contributions $	9 SIMPLE contributions $	
Account number (see instructions)		10 Roth IRA contributions $	11 If checked, required minimum distribution for 2006 ☐	

Form **5498** (keep for your records) Department of the Treasury - Internal Revenue Service

'Tis the Season

That's right, the **IRA Reporting Season!** By the time the Christmas decorations and tinsel are finally put away for another year, we find ourselves right in the middle of our favorite time of the year…IRA **Reporting.** Here's a brief recap of some things to remember.

Fair Market Value – The fair market value (FMV) of every traditional (including SEP IRA) and Roth IRA, as of December 31, 2005, must be reported to the IRA owner by January 31, 2006. Essentially, this also applies to SIMPLE IRAs; however, the IRS calls it "a statement of account balance and activity." There is no IRS required format for this statement, but the IRS does indicate that the FMV of each IRA must be clearly indicated.

This statement is also required for all beneficiaries of deceased IRA owners. If there is a balance in the inherited IRA on December 31, the FMV must be reported in the name and Social Security Number/Taxpayer Identification Number of the beneficiary. The IRS suggests the title of this account to be in a manner similar to this: "Jane Doe as beneficiary of John Doe's traditional IRA."

It is important to remember that the FMV of IRAs with non-cash assets must also be reported. The IRA custodian/trustee is required to obtain the FMV. Obtaining the FMV of listed assets can be easy. Unlisted assets and real estate is not always as easy, but it is required. An appraisal of those assets must be obtained for proper reporting.

Note, reporting fair market value in January is not required for Coverdell Education Savings Accounts (CESAs) or Health Savings Accounts (HSAs).

Required Minimum Distribution Notice – Also due by January 31, 2006, is the 2006 Required Minimum Distribution (RMD) Notice. This is due for each traditional (including SEP IRA) and SIMPLE IRA accountholder who is age 70½ or older by December 31, 2005 and has a balance in his/her IRA on December 31, 2005.

This report can be accomplished in two ways, with or without the actual RMD amount calculated. In either method, the notice must include the due date of the 2006 RMD, and state that the information will be

Continued on page 3

'Tis the Season,
Continued from page 2

sent to the IRS on the 2005 IRS Form 5498, IRA Contribution Information. If the RMD amount is not provided, the IRA notice must also include an offer by the IRA custodian/trustee to calculate it if asked to do so by the IRA owner.

It is not required to notify beneficiaries of deceased IRA owners.

Other Required Reports

These forms are due to accountholders and beneficiaries of deceased accountholders by January 31, 2006. The 2005 forms report distributions taken during calendar year 2005.

IRS Form 1099-R – *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*

IRS Form 1099-Q, *Payments From Qualified Education Programs* (Under Sections 529 and 530) –

IRS Form 1099-SA *Distributions From an HSA, Archer MSA, or Medicare Advantage MSA*

These forms must be filed with the IRS by February 28, 2006; March 31, 2006, if filed electronically.

IRA Form 5498, *IRA Contribution Information* – IRA owners and beneficiaries of deceased IRA owners must be provided with the 2005 5498 and it must be filed with the IRS by May 31, 2006.

IRS Form 5498-SA, *HSA, Archer MSA, or Medicare Advantage MSA Information* – Each 2005 5498-SA must be provided to the account owner/beneficiary and filed with the IRS by May 31, 2006.

IRS Form 5498-ESA, *Coverdell ESA Contribution Information* – This 2005 report is required to be provided to the recipient by May 1, 2006. It must be filed with the IRS by May 31, 2006.

Electronic Reporting to Recipients

The IRS instructions indicate that electronic reporting to the recipients of these statements and reports is allowed. The requirements and restrictions that must be adhered to BEFORE doing so, however, are extensive. For a complete list of the required procedures, please review IRS' *2005 General Instructions for Forms 1099, 1098, 5498 and W-2G,* page GEN-11.

2006 RMD Notices Due by 1/31/06

This article is a reminder article. All IRA custodians are required to furnish an RMD notice for 2006, to those IRA owners who attain age 70½ in 2006, or who attained age 70½ in a prior year.

Set forth below is a Q&A dealing with the RMD topic.

Question: What are an IRA custodian's duty with regard to an accountholder's RMD calculation.

Answer: The IRS finalized new RMD regulations in 2002, effective for 2003 RMDs. The IRS also issued Notice 2002-27. An IRA custodian must provide an RMD Notice by January 31 of each year, to accountholders who are required to take an RMD in that year. This Notice may be provided in one of two ways: 1) the bank may actually calculate the RMD and enter it on the Notice, or, 2) the bank may simply notify the accountholder that an RMD must be taken, and offer to calculate the amount upon the accountholder's request. The IRS rules do not permit an IRA custodian to adopt the position that complying with the RMD rules is solely the responsibility of the IRA accountholder. That is, the IRA plan agreement cannot be written to state that complying with the RMD rules is solely the responsibility of the IRA accountholder. Too many brokerage firms took this approach prior to 2002, and too many IRA accountholders were NOT taking the proper RMD amount.

The Notice must also explain the date by which the RMD must be taken — by April 1 of the following year for those turning age 70½ during the year, and by 12/31 for those already in distribution.

If the bank chooses option #2 above, it must also provide the name and phone number of a bank contact person.

By 5/31 of each year, the bank must provide IRS Form 5498 to all individuals who have made contributions to their IRA. The IRS has added a checkbox on this form which must be checked by the IRA custodian, if the identified accountholder must take an RMD for the year. For example, If an RMD is required for 2006, the 2005 5498 must have the box checked.

If an accountholder has not had their RMD distributed to them by October 1 of the year, banks usually take

Continued on page 7

IRA/Pension Statistics for 2002

It normally takes the IRS 3-4 years before they release various statistics concerning a given tax year. The IRS has now released the tax information for 2002, and some preliminary data for 2003. The information set forth below comes from the tax returns of individuals, including self-employed individuals. The information set forth on the Form 5498 is NOT considered, nor is the information for corporate filers.

IRA Annual Contributions

2002 was the first year for the $3,000/$3,500 IRA contribution limits. The contribution limit had been $2,000, from 1982 - 2001. With respect to 2001, 3,448,000 returns showed a tax deduction amount of $7,407,000,000. Note that these returns may either be for a single person or a married couple. The average deduction (and contribution) for 2001 was $2,148. With respect to 2002, 3,278,000 returns showed a tax deduction amount of $9,462,000,000. The average deduction (and contribution) was $2,887. The increase from $7.4 billion to $9.5 billion is a 27.8% increase. Because the number of tax returns showing an IRA deduction actually declined, the average contribution actually increased by 35%.

See Table A, as it shows the demographics of who made the contributions, by income. 38.2% of the contributions are being made by individuals with tax returns showing adjusted gross incomes (AGIs) between $50,000 and $200,000. Be aware that these statistics do not show the amount of nondeductible contributions being made by higher income or wealthier taxpayers. Other tax statistics show the nondeductible contributions to be approximately 30% of all contributions.

Continued on page 5

Table A — IRA Payments by AGI Ranges

	Number of Returns	Amount of IRA Payments (In Thousands)
All Returns	**3,277,671**	**$9,462,404**
No AGI	11,692	32,564
$1 under $5,000	33,388	56,802
$5,000 under $10,000	59,258	125,504
$10,000 under $15,000	119,523	214,793
$15,000 under $20,000	179,740	410,652
$20,000 under $25,000	225,937	532,955
$25,000 under $30,000	236,114	575,254
$30,000 under $40,000	470,919	1,210,001
$40,000 under $50,000	376,191	1,076,660
$50,000 under $75,000	611,443	1,771,047
$75,000 under $100,000	395,673	1,262,996
$100,000 under $200,000	465,778	1,719,298
$200,000 under $500,000	71,457	371,460
$500,000 under $1,000,000	14,262	69,797
$1,000,000 under $1,500,000	3,045	15,854
$1,500,000 under $2,000,000	1,195	6,240
$2,000,000 under $5,000,000	1,696	8,709
$5,000,000 under $10,000,000	250	1,287
$10,000,000 or more	109	530
Taxable returns	**2,817,795**	**$8,338,568**
Nontaxable returns	**459,876**	**$1,123,836**

Table B — SEP and Keogh Contributions by AGI Ranges

	Number of Returns	Amount of Keogh/SEP Payments (In Thousands)
All Returns	**1,186,947**	**$16,349,738**
No AGI	3,280	18,674
$1 under $5,000	3,950	5,617
$5,000 under $10,000	8,880	156,499
$10,000 under $15,000	13,651	33,269
$15,000 under $20,000	17,562	52,972
$20,000 under $25,000	19,559	71,149
$25,000 under $30,000	19,980	73,263
$30,000 under $40,000	55,449	337,077
$40,000 under $50,000	54,433	346,106
$50,000 under $75,000	167,039	1,111,159
$75,000 under $100,000	159,172	1,408,746
$100,000 under $200,000	375,029	5,127,692
$200,000 under $500,000	224,470	5,458,794
$500,000 under $1,000,000	43,717	1,413,304
$1,000,000 under $1,500,000	10,755	370,934
$1,500,000 under $2,000,000	4,052	144,730
$2,000,000 under $5,000,000	4,566	172,197
$5,000,000 under $10,000,000	931	30,356
$10,000,000 or more	471	17,201
Taxable returns	**1,118,579**	**$15,937,030**
Nontaxable returns	**68,368**	**$412,709**

CWF Observation. Many banks apparently no longer wish to bother with Keogh and SEP plans. The fact is, that is where the money is. 1.2 small business owners contributed $16.4 billion to their Keoghs and SEPs, versus 3.3 million individuals making contributions of $9.5 billion to their IRAs.

The Pension Digest

IRA/Pension Statistics for 2002, Continued from page 4

Rollover Contributions

The best information with respect to rollovers comes from the 5498 forms. The most recent data of which we are aware is for the 2000 tax year. See the chart set forth below.

Summary of Contributions

It is obvious that a financial institution should be ready to service well, the rollover IRA market. A financial institution wants to be efficient at gaining and servicing rollover contributions. It is also obvious that more financial institutions should be seeking SEP and Keogh contributions, because that is where the money is. 1.2 small business owners contributed $16.4 billion to their Keoghs and SEPs, versus $3.3 million making IRA contributions, to the extent of $9.5 billion. With the increase in the contribution limit to $4,000/$4,500 for 2005, this $9.5 billion should increase to at least $12.5 billion. The 2006 limit of $4,000/$5,000 will also lead to increased contributions.

Keogh and SEP Contributions

2002 was also the first year for higher SEP and Keogh profit sharing contribution limits. The maximum deductible amount had been increased to be the lesser of: 25% of compensation, or $200,000. Unfortunately, there is no breakout of SEP versus Keogh contributions. With respect to 2001, 1,290,000 returns showed a tax deduction amount of $13,114,000,000. The average deduction was $11,048. With respect to 2002, 1,187,000 returns showed a tax deduction amount of $16,350,000,000. The average deduction was $13,774. There was a 24.7% increase in the contribution amount of $13.1 billion for 2001 — to $16.4 billion for 2002. Again, because the number of filers showing a Keogh or SEP deduction actually decreased from 2001 to 2002, the average contribution actually increased by 25%.

The individuals claiming these deductions are primarily those with AGIs between $100,000 and $500,000. These individuals contributed $10.5 billion

Continued on page 6

Chart #1 — Rollover Contributions into Traditional IRAs by Income for 2000

Adjusted Gross Income	Number of Taxpayers	Rollover Amount	Average
No adj. income	17,300	$830,255,000	$47,992
$1 under $5,000	39,225	$1,768,855,000	$45,095
$5M under $10M	51,230	$2,306,469,000	$45,022
$10M under $15M	101,107	$2,083,368,000	$20,606
$15M under $20M	160,733	$4,402,049,000	$27,387
$20M under $25M	161,633	$3,220,508,000	$19,925
$25M under $30M	184,555	$5,100,630,000	$27,637
$30M under $40M	377,554	$11,085,441,000	$29,361
$40M under $50M	387,108	$12,901,661,000	$33,328
$50M under $75M	849,961	$36,102,772,000	$42,476
$75M under 100M	639,395	$29,741,269,000	$46,515
$100M un. $200M	783,699	$62,821,911,000	80,161
$200M un. $500M	255,340	$38,157,995,000	$149,440
$500M un$1,000M	43,758	$ 8,025,954,000	$183,417
$1,000,000/over	26,569	$ 7,087,823,000	$266,770
TOTAL	4,079,197	$225,636,922,000	$55,314

CWF Observations

1. There were 4,079,197 individuals who made a rollover contribution into an IRA. There is no information showing whether the funds had been distributed from a 401(k) plan or other pension plan. The amount rolled over was $225.6 billion. The average rollover amount was $55,314.

2. As expected, the largest averages belong to those in the highest income ranges.

3. The amount rolled over into traditional IRAs was $225.6 billion versus $10.0 billion of annual contributions. One would think more banks would communicate to their clients their wish to help with such rollover or direct rollovers than they do. The brokerage firms appear to do a much better job of advertising they will help with direct rollovers.

IRA/Pension Statistics for 2002,
Continued from page 5

of the $16.3 billion which is contributed. That is 64.42%. Those between $50,000 and $100,000 AGI contributed $2.5 billion, and those between $500,000 to $1 million AGI contributed $1.4 billion. Thus, those between $50,000 and $1 million AGI made 88% of the contributions.

The tax laws allow various amounts to be deducted from gross income to arrive at adjusted gross income. These amounts are called "statutory adjustment." The two largest adjustments are the self-employment tax deduction ($18.7 billion) and the deduction for SEP and Keogh contributions ($16.4 billion).

Distributions from IRAs and Pension Plans

Amounts withdrawn or distributed from IRAs and pension plans must be included in income, and taxes will need to be paid. Table C, below, shows the distributions for the years 1988 - 2002. In 1988, $9.4 billion was distributed from IRAs. In 2002, the amount was $49 billion. In 1988, $117.3 million was distributed from pension plans. In 2002, the amount increased to $198.9 billion. The amount being withdrawn from IRAs actually decreased from $57 billion in 2000, to $49 billion in 2002. These withdrawn amounts will either be spent or must be reinvested.

The Retirement Savings Tax Credit

In order to try to induce individuals with low to moderate income to make IRA or 401(k) contributions, a special tax credit was authorized for 2002 - 2006. 2002 was the first year the credit could be claimed. Remember that a credit results in a dollar-for-dollar reduction in a person's tax liability. 5,307,000 tax returns showed a credit claimed, amounting to $1,058,000,000. The average credit per tax return was $200.

Table D below shows the credit as shown on tax returns with AGI between $20,000 and $50,000. This credit is not available for AGI greater than $50,000.

The IRS has recently issued a chart showing that 5,486,144 tax returns reflected the credit for 2003. This was a slight increase over 2002. This chart is reproduced on page 7, and shows, on a state-by-state basis, the number of returns which claimed the credit.

Continued on page 7

Table C — Taxable IRA and Pension/Annuity Distributions for 1988 - 2002

Year	Amount of IRA Distributions (In Thousands)	% Change	Amount of Pension Distributions (In Thousands)	% Change
1988	9,398	N/A	117,317	N/A
1989	11,190	19.1	118,837	1.3
1990	13,431	20.0	121,878	2.6
1991	15,145	12.8	129,590	6.3
1992	18,726	23.6	132,924	2.6
1993	18,741	.01	134,266	1.0
1994	22,339	19.2	138,625	3.2
1995	24,486	9.6	145,048	4.6
1996	29,024	18.5	152,190	4.9
1997	34,382	18.5	161,813	6.3
1998	45,457	32.2	172,178	6.4
1999	52,306	15.1	182,660	6.1
2000	57,472	9.9	189,215	3.6
2001	53,262	-7.3	191,274	1.1
2002	49,038	-7.9	198,911	4.0

Table D — Retirement Savings Contribution Credit for 2002

	Number of Returns	Amount of Credit
All Returns	**5,307,176**	**$1,058,219**
No AGI	56	46
$1 under $5,000	2,010	289
$5,000 under $10,000	42,690	4,006
$10,000 under $15,000	261,581	69,624
$15,000 under $20,000	693,676	115,363
$20,000 under $25,000	1,073,443	219,729
$25,000 under $30,000	649,487	220,267
$30,000 under $40,000	1,265,664	205,917
$40,000 under $50,000	1,318,564	222,977
$50,000 and over	No credit available for AGI > $50,000	
Taxable returns	**3,667,037**	**$627,994**
Nontaxable returns	**1,640,140**	**$430,224**

THE Pension Digest

IRA/Pension Statistics for 2002,
Continued from page 6

Chart #2

Low Income Savers Benefiting from Retirement Savings Contribution Credit
(Source: IRS Statistics of Income Division, Tax Year 2003)

State	Number of Returns	State	Number of Returns
CA	449,830	MD	83,206
TX	363,202	OK	82,925
FL	320,991	CO	77,998
NY	278,271	OR	69,343
PA	268,798	KS	67,480
OH	250,655	MS	61,270
IL	211,057	AR	61,111
NC	204,175	NE	52,478
MI	188,095	UT	51,507
GA	161,612	CT	49,378
WI	148,958	NM	40,706
IN	140,853	WV	40,578
TN	140,746	NV	36,923
VA	140,213	ME	35,641
MO	139,243	ID	34,463
MN	122,711	HI	32,475
WA	101,666	NH	26,227
MA	101,396	SD	25,835
SC	98,523	MT	25,187
AZ	97,700	ND	21,978
IA	95,889	RI	20,808
NJ	94,312	VT	16,623
KY	94,055	DE	14,672
AL	91,741	WY	11,471
LA	84,444	AK	9,720
		DC	6,882

Total for U.S. — 5,486,144 Returns

2006 RMD Notices Due by 1/31/06,
Continued from page 7

one of two courses of action: 1) they simply prepare the check with the correct RMD amount and send it to the accountholder, or 2) they send a reminder notice to the accountholder stating that the individual has not yet withdrawn the RMD amount from their IRA. Either of these is permissible. The IRA accountholder is the party primarily responsible to withdraw the RMD amount.

It is certainly not acceptable for a financial institution to take the position that it is not going to calculate RMDs for its IRA accountholders.

Retirement Savings Contributions Credit

(Excerpted from the IRS Winter 2005 Retirement News for Employers)

Does your business sponsor a Payroll Deduction IRA, 401(k), 403(b) or SIMPLE IRA plan? Then you, as a plan participant, and your employees, may be able to take a tax credit if you make eligible contributions for retirement. Plan participants may be able to take a credit of up to $1,000, or up to $2,000, if filing jointly. This credit could reduce — dollar-for-dollar — the federal income tax participants pay.

The "Saver's Credit" primarily benefits moderate to lower income workers. The amount of credit that plan participants are entitled to is based on their rate of credit and their adjusted gross income. In order to qualify for the credit, adjusted gross income cannot be more than:

- $50,000 if the filing status is married filing jointly,
- $37,500 if the filing status is head of household (with qualifying person), or
- $25,000 if the filing status is single, married filing separately, or qualifying widow(er) with dependent child.

In general, eligible contributions (up to $2,000 per person) include

- Contributions to a traditional or Roth IRA, and
- Salary reduction contributions (elective deferrals) to:
  1) A 401(k) plan, including a SIMPLE 401(k);
  2) A section 403(b) annuity;
  3) A state or local government plan — a section 457 plan
  4) A SIMPLE IRA plan
  5) A salary reduction SEP

Eligible contributions also include voluntary after-tax employee contributions to a tax-qualified retirement plan or section 403(b) plan annuity. Eligible contributions must be reduced — but not below zero — by any distributions from any IRA, plan, or annuity received during the year for which the credit is claimed. This distribution deadline goes until the tax return is filed and includes the previous two years as well.

Continued on page 8

Retirement Savings Contributions Credit,
Continued from page 7

The Saver's Credit is nonrefundable. In general, this means that amount of the credit in any year cannot be more than the amount of tax that would otherwise be paid.

The amount of the credit you can get is based on the contributions made and the rate of credit. The rate of credit depends on income and filing status and it can be as low as 10% or as high as 50%. The lower the income level, the higher the rate of credit. See Form 8880 to determine your rate of credit.

Announcement 2001-106 and Announcement 2001-120 (Spanish version) include additional information on the credit in a Q&A format and a sample notice that employers can give to employees explaining the credit. Additional info can be found in Pub. 590.

IRA Application Forms — Potential Liability with Respect to Spousal Consent Provisions

We have conducted a number of IRA audits recently. We have had the opportunity to review the IRA plan agreements of another major IRA service provider. This company had adopted the approach of apparently requiring any married person to designate his or her spouse as the sole beneficiary, unless the spouse consents to allow the IRA accountholder to designate one or more beneficiaries in addition to the spouse, or other than the spouse.

Most states do not have community property laws and do not have state laws mandating that a spouse must be designated as the IRA beneficiary. The community property law states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. Wisconsin is a marital property state.

Our concern is this — there will be many individuals who do not wish to obtain their spouse's consent when naming an IRA beneficiary. There could be numerous reasons. It does not matter whether it is a first, second, third or fourth marriage situation. The fact that most states have laws allowing a surviving spouse to elect to receive a specified percentage of a deceased spouse's estate is a separate legal issue than the issue of whether or not the law mandates that a spouse be named as an IRA beneficiary.

If the IRA plan agreement (and the IRA Disclosure Statement) do NOT disclose the fact in a clear and understandable fashion that obtaining the spouse's consent is a matter of your institution's policy, and NOT a matter of state law, then, we at CWF believe it is very likely that there could be liability claims against the financial institution serving as the IRA custodian. The IRA plan agreements, as written by this other service provider, give the impression that one must, as a matter of state law, designate one's spouse as their IRA beneficiary. Most states have no such requirement

It is easy to foresee potential legal claims. For example, assume that Jane Doe has an IRA with a balance of $70,000. She has had this IRA since 1998. She had made contributions to a 401(k) plan for many years, and, in 1998, rolled these funds into her IRA. She has been single since 1994. In 1998, she designated her son, Mark, and her daughter, Ann, as her IRA beneficiaries. This $70,000 has now grown to $100,000. In July of 2005, Jane married Tom Newsom. She now wishes to transfer this $100,000 to your institution. Your personnel (and the form) instruct her that she must designate Tom as her beneficiary. She signs the form reluctantly. She had told her children in May of 2005, that she wanted them to be the beneficiaries of her IRA funds, and that her upcoming marriage did not change that fact. Jane dies in October of 2005. Mark and Ann are very disgruntled to learn that they are no longer the beneficiaries of the IRA.

We suggest that financial institutions located in non-community-property-law states discuss this subject with their attorney. We also suggest that those institutions using forms mandating that a spouse be the beneficiary consult with their attorney concerning an institution's potential liability under such an approach. We would also suggest that the IRA Disclosure Statement make it very clear that the need to obtain the spouse's consent to the naming of a different beneficiary is a policy of the institution, and is not a matter of state law. Your institution will then need to decide in what situations, if any, you would allow a client or prospective client to name a beneficiary other than the spouse, without obtaining the spouse's consent.