THE Pension Digest

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ALSO IN THIS ISSUE –

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

Will IRA Amendments Be Required As a Result of Hurricane Katrina?

Yes. There have been tax law changes which will require the IRS to revise its Model IRA forms. The IRA tax law changes come from the Hurricane Katrina Tax Relief Act of 2005. These provisions are effective now. For example, certain individuals are eligible for waiver of the 10% additional tax on pre-age 59½ distributions, and are also eligible to make a rollover using a special 3-year rule, rather than the 60-day rule.

What is the Deadline for Furnishing Such Amendments?

The IRS has not yet set a deadline. We expect the IRS will do so shortly.

What Should an IRA Custodian or Trustee Do?

We recommend furnishing a comprehensive IRA amendment in the very near future. If you cannot do it by January 31, 2006, then we suggest furnishing one on or before May 31, 2006. A comprehensive IRA amendment is one which contains a revised IRA plan agreement along with a revised and updated IRA Disclosure Statement.

Are There Other Reasons It Is a Good Idea to Furnish a Comprehensive Amendment Now?

As you know, there have been changes in the contribution limits. The contribution limit for 2005 and 2006 is $4,000 if one is under age 50, and

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Probable IRA Tax Law Changes

Congress is actively talking about tax bills. A new tax bill, however, may not be signed into law until 2006. The name of the final tax bill will be similar to — The Tax Relief Extension Reconciliation Act of 2005 or 2006. The possible law changes affecting IRAs are as follows.

1. Additional relief related to Hurricanes Rita and Wilma. The changes which were adopted with respect to Katrina would also be adopted for Rita and Wilma. These changes were: the 3-year rollover rule, the 3-year averaging rule, and waiver of the 10% additional tax.

2. The IRA/Pension Savers Credit will expire at the end of 2006, unless it is extended. For some reason, Congress has tried a number of times to extend this special provision, but has failed to get it done. Recent statistics show that 5,000,000 tax returns reflect that an individual is taking advantage of this special credit. One would think the decision to extend this credit would be an easy one, but that has not been the case. The credit obviously reduces the amount of tax dollars which the federal government collects.

3. Tax-Free Distributions from IRAs for Charitable Purposes. The Senate version of the tax bill includes provisions to exclude from gross income certain distributions from a traditional IRA or a Roth IRA. Under current law, a distribu-

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$4,500 for 2005 if one is age 50 or older. For 2006, an eligible person age 50 or older may contribute $5,000. More people are also able to take tax deductions for their IRA contributions, because the AGI has increased for 2005 ($50,000 - $60,000 for single filers and $70,000 - $80,000 for married individuals filing jointly) and for 2006 ($50,000 - $60,000 for single filers and $75,000 - $85,000 for married individuals filing jointly.)

We have also strengthened various contractual provisions found in Article VIII. There is also an express provision authorizing an inheriting beneficiary to designate his or her own beneficiary(ies). There is now a provision incorporating, by reference, an institution's rules and procedures for Customer Identification Programs and Privacy Policies. There is now an express provision allowing the IRA custodian or IRA trustee to distribute the RMD amount by November 15 of each year when the IRA accountholder has failed to furnish an instruction to be paid his or her RMD by year end or furnished a certification that the RMD is being taken from another IRA. A more comprehensive definition of "prohibited transaction" has also been added. A warning has been provided that the IRA accountholder must consult with his or her tax advisor if he or she has any thought that an IRA transaction might be a a prohibited transaction.

In summary, an IRA custodian will want to furnish an IRA amendment to its IRA accountholders and inheriting beneficiaries in the very near future.

Probable IRA Tax Law Changes Continued from page 1

tion withdrawn and then given to a charitable tax organization would be taxable to the IRA accountholder. He or she may or may not be entitled to take a tax deduction after giving it to the charitable tax organization. In general, a charitable tax organization is any tax exempt organization. To qualify as a tax-free distribution, the distribution would have to be made to either: (1) a tax-exempt organization to which deductible contributions can be made, or a charitable remainder unitrust, a pooled income fund, or a charitable gift annuity. There are special rules when there is basis within the traditional IRA(s).

4. Appraisal Reform. This proposed law change is directed more at charitable contributions. Under current law appraisals are required for donations of over $5,000. The bill provides definitions of a qualified appraiser and qualified appraisals. It may be possible that these definitions would apply for IRA purposes also.

60-Day Rollover Rule Clarified for Saturdays, Sundays, and Holidays

Concerning the 60-day rollover rule, if the 60th day falls on a Saturday, Sunday, or legal holiday, does the IRA accountholder have until the next business day to make the rollover contribution?

CWF has written its plan agreements to state that IRS guidance is unclear on this topic, and we have therefore suggested that if an accountholder wishes to make such a rollover, the accountholder should sign a special form stating that they accept responsibility for all consequences, should the IRS conclude that the rollover was not valid.

However, after reviewing Code section 7503, and the related regulation, CWF believes the accountholder is allowed to make the rollover on "the next succeeding day which is not a Saturday, Sunday or legal holiday."

Code section 7503 defines a holiday to be a "legal holiday in the District of Columbia." CWF presumes this to mean all Federal holidays. "Legal holiday" is also defined to be any statewide legal holiday (in any IRS distribution outside the District of Columbia but within an IRS district of such state.

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60-Day Rollover Rule Clarified for Holidays, Continued from page 2

In the United States, there are 10 federal holidays set by law: Legal holidays: USC Title 5 Section 6103—

Under current definitions, four are set by date:

New Year's Day, *January 1*

Independence Day, *July 4*

Veterans Day, *November 11*

Christmas Day, *December 25*

If any of the above fall on a Saturday, then Friday may be observed as a holiday by various institutions. Similarly, if one falls on a Sunday, then Monday may be observed as a holiday.

The other six are set by a day of the week and month:

Martin Luther King's Birthday, *Third Monday in January*

Washington's Birthday, *Third Monday in February*

Memorial Day, *Last Monday in May*

Labor Day, *First Monday in September*

Columbus Day, *Second Monday in October*

Thanksgiving Day, *Fourth Thursday in November*

States have a variety of holidays. For example, the day after Thanksgiving is considered a holiday in Delaware, Florida, Georgia, Iowa, Minnesota, Nevada, and New Hampshire. If the 60th day was Thanksgiving, and the individual resided in one of these states, the rollover would be valid if not made until the Monday after Thanksgiving, because Thursday and Friday are holidays, and the next two days are Saturday and Sunday.

Alaska celebrates Seward's Day on March 3 — to celebrate the anniversary of the purchase of Alaska from Russia.

In Maine and Massachusetts, Patriot's Day is celebrated the third Monday in April, in remembrance of the midnight ride of Paul Revere and the battles of Lexington and Concord. The Boston Marathon is run as part of the festivities.

Inauguration Day (January 20, after a Presidential election) is a holiday for federal workers in and around Washington DC.

The President of the United States, as provided for under Federal law, may declare other days as "national holidays," but these would not be considered "federal" holidays.

Example #1: Because Christmas (December 25) falls on Sunday in 2005, the legal holiday will be Monday, December 26. If the 60th day was Saturday, December 24, an individual would have until Tuesday, December 27, 2005 to make the rollover.

Example #2: An individual living in Alaska has determined that March 3 is the 60th day, for rollover purposes, for his IRA distribution to be recontributed. Because this day is a holiday in Alaska, this individual would have until the next business day to make his rollover.

CWF Conclusion. If an IRA accountholder's valid rollover period (60th day) ends on a Saturday, Sunday, or holiday, the accountholder has until the next day which is not a Saturday, Sunday or legal holiday, to make the rollover. Holidays include both Federal holidays, and State holidays, as observed in each particular state.

Custodian's Duties When an IRA Is Directly Rolled Over to a 401(k) plan

Prior to January 1, 2002, it was not permissible to directly roll over funds from an IRA to a qualified retirement plan, unless the funds were coming from a conduit IRA. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) revised the law to generally allow such rollover.

Because more people are becoming aware of the benefits of directly rolling over IRA funds to a 401(k) plan, IRA custodians will increasingly be asked to perform such transactions. You will want to be certain that you have proper documentation for this type of direct rollover.

The individual asking you to perform this transaction may or may not bring you a completed form from the qualified plan. Even if the individual brings a completed form, CWF recommends that you inform them that it is bank policy to only use the bank's normal form (such as CWF Form #69) and have them complete that, instead. From an administrative standpoint, by using this method, you eliminate the problem of various bank employees having to decide whether or not the form brought in by the individual

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Custodian's Duties, Continued from page 3

meets the bank's specifications for this type of transaction. This will also provided consistency in your direct rollover procedures.

One of the items you will want the rollover form to substantiate is that the plan to which the individual wishes to have the funds rolled over is, indeed, a "qualified" plan. CWF Form #69 has a section in which the qualified plan administrator expressly certifies the retirement plan is a "qualified" plan. This same section notes that the plan is written to accept such rollovers.

CWF's Form #69 gathers other information needed to properly perform this direct rollover transaction. You will want to note that is not permissible for an individual to roll over any "basis" (nondeductible and, therefore, nontaxable) contributions made to the IRA). Only IRA funds which would otherwise be taxable upon distribution are eligible to be directly rolled over. You will also wish to understand that it is permissible for the individual to roll over only a portion of the IRA funds; there is no requirement to roll over the entire IRA balance.

As in any direct rollover transaction, the check, in a direct rollover from an IRA to a 401(k) or other retirement plan, will be made out to the 401(k) plan, never to the individual.

The IRA custodian will be required to prepare a 1099-R to report the distribution from the IRA. However, there is no Form 5498 equivalent prepared showing the contribution to the qualified plan. The individual will need to explain this rollover on their tax return; otherwise the IRS will assume it is a normal distribution of IRA funds, and will think that taxes are owed on the rollover amount.

CWF form #69 is reproduced on page 5.

FDIC Insurance to Increase for IRAs

A new bill (H.R. 4636) to increase the amounts of FDIC insurance coverage for both pension plans and regular savings accounts, passed the House the week of December 19, 2005, after passing the Senate on December 17, 2005. It is expected that President Bush will sign this bill into law; however, it is included in the budget reconciliation legislation (S. 1932, H.R. 4241), which is still pending. The insurance limit will then be referred to as the "Standard Maximum Deposit Insurance Amount."

The legislation will raise the federal deposit insurance levels on IRAs and other retirement accounts to $250,000, from the current $100,000. The bill will also gradually raise the FDIC insurance limit for regular savings accounts. The limits for these accounts will stay at the current level of $100,000 until April 1, 2010. After that date, the FDIC will have the option of increasing the $100,000 coverage by $10,000 every five years thereafter, based on inflation.

The same limits will apply to credit unions, employee benefit plans and pass-through/share insurance.

There is considerable politicking involved in this FDIC increase. Although everyone seems to be in favor of raising the insurance limit for pension plans, not all are in favor of raising the insurance limit for regular savings accounts. Large banks are opposed to the increased limit, because they will undoubtedly pay more in insurance premiums. Smaller banks are in favor of the increased limit, because they will retain more customers. Bank regulators are opposed to the increase — although they agree with protecting deposits up to a reasonable limit, they believe an individual must take some responsibility for the safety of their assets; it should not be totally up to the government to provide such protection.

This act will also merge the Bank Insurance Fund and the Savings Association Insurance Fund; it will now be called the Deposit Insurance Fund.

CWF will keep monitoring the IRS on this subject and will provide any new information in a future issue of this newsletter.

Special Instruction
Rollover from an IRA to a Qualified Plan, 403(b) Plan or Section 457(b) Plan

IRA Custodian/Trustee
Name ______________________________
Address ______________________________
City, State, Zip ______________________________
Phone: (________) ____________________

IRA Accountholder
Name ______________________________
Home Address ______________________________
City, State, Zip ______________________________
County ____________________ Date of Birth ____________________
SSN ____________________ Plan No. ____________________
Phone: Home (_______) ____________ Work (_______) ____________

Plan Administrator or Trustee
Name ______________________________
Address ______________________________
City, State, Zip ______________________________
Phone: (________) ____________________
☐ Plan Administrator ☐ Trustee

Special Instructions and Certification by Accountholder
I, the IRA accountholder, hereby request that the IRA custodian/trustee send:

☐ my entire account balance, or
☐ the amount of $___________ ,

from the accounts indicated in the "Financial Information" section of this form, to the specified trustee of the eligible retirement plan as listed above. Since it is reasonable to believe that this distribution is not includable in income because of the rollover instruction, I understand that the withholding rules do not apply to this distribution. Regardless, I expressly waive withholding.

I hereby irrevocably elect to roll over the amount distributed into the specified qualified plan, 403(b) or 457(b) plan.

I certify that I am only rolling over that part of my IRA which is taxable.

I have been advised to consult with my tax or legal advisor. I accept full responsibility that this distribution from my IRA account qualifies to be rolled over into the eligible retirement plan and that the requirements of Code section 408(d)(3)(A)(ii) have been met.

______________________________ ______________
Signature of Accountholder Date

Special Instructions and Certification by Qualified Plan Administrator or Trustee

I hereby certify that the plan which will receive the rollover contribution qualifies under Code Section 401(a), 403(b) or 457(b), as applicable. I assume full responsibility for the determination that these funds are eligible to be received as a rollover contribution and that the requirements of Code section 408(d)(3)(A)(ii) have been met.

______________________________ ______________
Signature of Plan Administrator or Trustee Date

Purpose – *The IRA accountholder has determined that he or she wishes to roll over funds or assets from the referenced IRA to the referenced eligible retirement plan. Prior to January 1, 2002, a rollover from an IRA to a qualified plan or 403(b) plan was permissible only if the IRA qualified as a conduit IRA. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) revised federal income tax law to allow for additional rollovers. See the summary on the reverse side as excerpted from the IRS Publication 590.*

Note an accountholder is not eligible to roll over any of his or her basis (i.e. nondeductible contributions) with respect to an IRA .

The purpose of this form is to create the authority for the IRA custodian/trustee to remit the funds on behalf of the IRA accountholder directly to the eligible retirement plan. This special instruction is needed because the Internal Revenue Code does not authorize a direct rollover from an IRA to an eligible retirement plan as it does for a direct rollover of funds from an eligible retirement plan to an IRA. For federal income tax purposes, the IRA custodian/trustee must treat this transaction as if there was a distribution to the IRA accountholder. Therefore, the IRA custodian/trustee will prepare a Form 1099-R, reporting the distribution to the IRS. The distribution will be reported on Form 1099-R as a Distribution Code "G" "Direct Rollover to an eligible retirement plan."

The IRA accountholder should be aware that the eligible retirement plan does not report to the IRS that it received an IRA rollover contribution on behalf of a specific individual as is done by an IRA custodian which receives a direct rollover contribution.

Sample

Financial Information

	Investment Account #	Investment Account #
	________	________
Amount Requested (+)	________	________
Earnings Not Yet Reported to DP (+)	________	________
Interest Penalty (-)	________	________
Fees (-)	________	________
Net Amount Rolled Over (=)	________	________

	Investment Account #	Investment Account #
	________	________
Amount Requested (+)	________	________
Earnings Not Yet Reported to DP (+)	________	________
Interest Penalty (-)	________	________
Fees (-)	________	________
Net Amount Rolled Over (=)	________	________

IRA #69 (5/03) White — IRA Custodian/ Trustee Yellow — Accountholder Pink — QP Trustee

IRA-BASED PLANS

	Payroll Deduction IRA	SEP	SIMPLE IRA Plan
Key Advantage	Easy to set up and maintain.	Easy to set up and maintain.	Salary reduction plan with little administrative paperwork.
Employer Eligibility	Any employer with one or more employees.	Any employer with one or more employees.	Any employer with 100 or fewer employees that does not currently maintain another retirement plan.
Employer's Role	Arrange for employees to make payroll deduction contributions. Transmit contributions for employees to IRA. No annual filing requirement for employer.	May use IRS Form 5305-SEP to set up the plan. No annual filing requirement for employer.	May use IRS Forms 5304-SIMPLE or 5305-SIMPLE to set up the plan. No annual filing requirement for employer. Bank or financial institution handles most of the paperwork.
Contributors to the Plan	Employee contributions remitted through payroll deduction.	Employer contributions only.	Employee salary reduction contributions and employer contributions.
Maximum Annual Contribution (per participant) See **www.irs.gov/ep** for annual updates	$4,000 for 2005 – 2007; $5,000 for 2008. Additional contributions can be made by participants age 50 or over.	Up to 25% of compensation but no more than $42,000 for 2005.	***Employee***: $10,000 in 2005. Additional contributions can be made by participants age 50 or over. ***Employer***: Either match employee contributions 100% of first 3% of compensation (can be reduced to as low as 1% in any 2 out of 5 yrs.); or contribute 2% of each eligible employee's compensation.
Contributor's Options	Employee can decide how much to contribute at any time.	Employer can decide whether to make contributions year-to-year.	Employee can decide how much to contribute. Employer must make matching contributions or contribute 2% of each eligible employee's compensation.
Minimum Employee Coverage Requirements	There is no requirement. Coverage can be made available to any employee.	Must be offered to all employees who are at least 21 years of age, employed by the employer for 3 of the last 5 years and had compensation of $450 (for 2005).	Must be offered to all employees who have compensation of at least $5,000 in any prior 2 years, and are reasonably expected to earn at least $5,000 in the current year.
Withdrawals, Loans and Payments	Withdrawals permitted anytime subject to federal income taxes; early withdrawals subject to an additional tax (special rules apply to Roth IRAs).	Withdrawals permitted anytime subject to federal income taxes, early withdrawals subject to an additional tax.	Withdrawals permitted anytime subject to federal income taxes, early withdrawals subject to an additional tax.
Vesting	Contributions are immediately 100% vested.	Contributions are immediately 100% vested.	Employer and employee contributions are immediately 100% vested.

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DEFINED CONTRIBUTION PLANS			Defined Benefit
Safe Harbor 401(k)	**401(k)**	**Profit Sharing**	
Permits high level of salary deferrals by employees without annual nondiscrimination testing.	Permits high level of salary deferrals by employees.	Permits employer to make large contributions for employees.	Provides a fixed, pre-established benefit for employees.
Any employer with one or more employees.	Any employer with one or more employees.	Any employer with one or more employees.	Any employer with one or more employees.
No model form to establish this plan. Advice from a financial institution or employee benefit advisor may be necessary. A minimum amount of employer contributions is required. Annual filing of Form 5500 is required.	No model form to establish this plan. Advice from a financial institution or employee benefit advisor may be necessary. Annual filing of Form 5500 is required. Also may require annual non-discrimination testing to ensure plan does not discriminate in favor of highly compensated employees.	No model form to establish this plan. Advice from a financial institution or employee benefit advisor may be necessary. Annual filing of Form 5500 is required.	No model form to establish this plan. Advice from a financial institution or employee benefit advisor would be necessary. Annual filing of Form 5500 is required. An actuary must determine annual contributions.
Employee salary reduction contributions and employer contributions.	Employee salary reduction contributions and/or employer contributions.	Annual employer contribution is discretionary.	Primarily funded by employer.
Employee: $14,000 in 2005; $15,000 in 2006. Additional contributions can be made by participants age 50 or over. ***Employer/Employee Combined***: Up to the lesser of 100% of compensation or $42,000 for 2005. Employer can deduct amounts that do not exceed 25% of aggregate compensation for all participants.	***Employee***: $14,000 in 2005; $15,000 in 2006. Additional contributions can be made by participants age 50 or over. ***Employer/Employee Combined***: Up to the lesser of 100% of compensation or $42,000 for 2005. Employer can deduct amounts that do not exceed 25% of aggregate compensation for all participants.	Up to the lesser of 100% of compensation. or $42,000 for 2005. Employer can deduct amounts that do not exceed 25% of aggregate compensation for all participants.	Annually determined contribution.
Employee can decide how much to contribute pursuant to a salary reduction agreement. The employer must make either specified matching contributions or a 3% contribution to all participants.	Employee can decide how much to contribute pursuant to a salary reduction agreement. The employer can make additional contributions, including matching contributions as set by plan terms.	Employer makes contribution as set by plan terms. Employee contributions, if allowed, as set by plan terms.	Employer generally required to make contribution as set by plan terms.
Generally, must be offered to all employees at least 21 years of age who worked at least 1,000 hours in a previous year.	Generally, must be offered to all employees at least 21 years of age who worked at least 1,000 hours in a previous year.	Generally, must be offered to all employees at least 21 years of age who worked at least 1,000 hours in a previous year.	Generally, must be offered to all employees at least 21 years of age who worked at least 1,000 hours in a previous year.
Withdrawals permitted after a specified event occurs (e.g. retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.	Withdrawals permitted after a specified event occurs (e.g. retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.	Withdrawals permitted after a specified event occurs (e.g. retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans and hardship withdrawals; early withdrawals subject to an additional tax.	Payment of benefits after a specified event occurs (e.g. retirement, plan termination, etc.) subject to federal income taxes. Plan may permit loans; early withdrawals subject to an additional tax.
Employee salary deferrals and most employer contributions are immediately 100% vested. Some employer contributions may vest over time according to plan terms.	Employee salary deferrals are immediately 100% vested. Employer contributions may vest over time according to plan terms.	May vest over time according to plan terms.	May vest over time according to plan terms.

Change in Substantially Equal Periodic Payment Schedule Due to Divorce

Question/Situation

An individual has an IRA. He has established a substantially equal periodic payment distribution schedule with respect to this IRA. Either the annuity or the amortization method is being used. He and his wife are in the process of divorce. It is proposed that the IRA be split 50/50.

The individual would like to decrease his current distribution amount, because the amount in the IRA will be reduced by 50%. It was thought that he would need to continue to take the same distribution amount even though one-half of his IRA would be transferred to his former wife. It was thought that his former wife would not need to be concerned about the substantially equal periodic payment schedule (SEPP), since the husband had been the one who had established the IRA.

Discussion

There are a number of concerns in situations such as this. The general rule is that adverse tax consequences will result if a person modifies a substantially equal periodic payment schedule before the law permits. The law expressly states that adverse tax consequences do NOT occur if the change is due to the death or disability of the IRA owner. The law does NOT define a divorce as an event which allows a person to permissibly modify the distribution schedule. The IRS chose not to discuss the subject of divorce when it issued Revenue Ruling 2002-62.

The IRS does make the statement, in Revenue Ruling 2002-62, that funds in an IRA subject to a substantially equal periodic payment schedule may not be transferred. A "normal" transfer would result in an impermissible modification.

Did the IRS mean that the "no transfer" rule would also apply to a divorce situation? One does not know. The conservative approach for the IRA custodian is to treat any transfer to an ex-spouse as an impermissible change to the SEPP schedule, and prepare the proper reporting. Certainly, the IRS could have discussed the impact of a divorce on a SEPP schedule, but chose not to do so.

However, in July of 1997, (obviously before Revenue Ruling 2002-62 was issued) the IRS issued Private Letter Ruling (PLR) 9739004. Our summary of this PLR is as follows. A husband transferred one-half of his IRA to an IRA established by his ex-wife. The husband established a new substantially equal periodic distribution schedule. The ex-wife also established a substantially equal periodic payment schedule with respect to her 50% share. The IRS concluded that because the two distributions were not substantially different than the amount which had been paid to the husband, there had not been an impermissible change, and there would not be the adverse tax consequences.

Because there is so little law on this subject, we believe this individual should seek a private letter ruling from the IRS. The IRA custodian should strongly encourage this filing.