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ALSO IN THIS ISSUE –

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

Special Notice - Heartland Disaster Tax Relief Act of 2008

Explanation of IRA Law Changes for Persons in the Midwestern Disaster Areas

On October 3, 2008, the President signed into law the Emergency Economic Stabilization Act of 2008. There were a number of laws contained within this one law. One has the subtitle,"Heartland Disaster Tax Relief Act of 2008." Most of the special tax relief laws applying to persons impacted by the 2005 Hurricanes – Katrina, Rita And Wilma will now apply to certain persons located in the Midwest impacted by storms, tornados and/or floods occurring in 2008. The concept of the law is - many times an individual and the community, after suffering losses from a disaster, will benefit if he or she can access his or her IRA and/or other retirement funds within employer plans and not be subject to the same tax provisions applying to a non-disaster situation. There are special rules for "qualified storm damage distributions". An individual is still required to include the qualified storm damage distribution in income, but there are special rules allowing him or her to pay fewer taxes than he or she normally would. This article discusses those special tax laws applying to traditional IRAs, Roth IRAs, SEP-IRAs an SIMPLE-IRAs. A separate article discusses the special rules for distributions from employer plans. A qualified storm damage distribution is any distribution received by an individual in 2008 or 2009 from a traditional IRA, Roth IRA, SIMPLE-IRA, SEP-IRA or other eligible retirement plan as long as the following conditions are met.

1. The distribution was made on or after the disaster date for the respective Midwestern disaster area and before January 1, 2010. In general, the date of the disaster is on or after May 20 and before August 1, 2008.

2. The individual's main home was located in a qualified storm damage disaster area, as listed later, on the date shown for the applicable storm area. Midwestern disaster area means an area with respect to which a major disaster has been declared by the President on or after May 20, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska and Wisconsin and determined by the President to warrant individual, or individual and public assistance from the Federal Government with respect to damages attributable to such severe storms, tornados, or flooding.

3. The individual sustained an economic loss because of such storms. Examples of an economic loss include, but are not limited to (a) loss, damage to, or destruction of real or personal property from fire, flooding, looting, vandalism, theft, wind or other causes; (b) loss

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related to displacement from his or her home; or (c) loss of livelihood due to temporary or permanent layoffs. If an individual meets all of these conditions, he or she is then has the right to designate a distribution as a qualified storm damage distribution. Note that the law does not require an individual to have suffered economic loss of $10,000 or more. Actually, there is no minimum dollar limit. This means many individuals who resided in the storm damage area are able to take advantage of these new rules (tax planning opportunities) regardless of whether he or she incurred much damage or loss. The individual only needs to have incurred some loss.

What are the four (4) special IRA distribution rules applying to qualified storm damage distributions?

Special Rule #1. The 10% additional tax of Code section 72(t) does not apply to any qualified storm damage distribution made on or before December 31, 2009. Example, Letitia, age 35 lives in Cedar Rapids, Iowa. She was unable to go to work for 10 days due to the severe flooding. She has $18,000 in her traditional IRA. If she would withdraw some or all of these funds from her traditional IRA on or before December 31, 2009, she would not owe the 10% additional tax.

Special Rule #2. There is a special income averaging mechanism. Unless a person elects otherwise and elects to include the entire amount in income for the year of the distribution, a person who receives a qualified storm damage distribution will include 1/3 of the distribution in income for the year of the distribution and then 1/3 of the distribution for each of the following two years. By spreading the distribution over 3 years, an individual will generally lessen the amount of income tax owing than if the entire amount is included in income in just one year. A qualified storm damage distribution is a distribution which takes place after the storms have occurred. Example. Paul Thomas withdraws $30,000 from his traditional IRA on February 15, 2009. He will include $10,000 in income for 2009, 2010 and 2011 unless he would make a special election to include the $30,000 in income for 2009.

Special Rule #3. Rather than being required to rollover a distribution within 60 days of receiving it, an individual who has received a qualified storm distribution from an IRA or other eligible retirement plan is given 3 years in which to complete the rollover. This special type of rollover is called a repayment. For example, if an individual took a distribution of $60,000 from an IRA on September 1, 2008, then, as long as he or she repays or contributes the $60,000 (in one or more contributions) on or before September 1, 2011, the distribution of the $60,000 will not be taxable.

Most qualified storm damage distributions are eligible for repayment to an IRA or other eligible retirement plan. It appears, however, that the IRS has adopted the approach that the standard rollover rules apply. For example, a required distribution is never eligible to be rolled over and thus could not be repaid even if a person designates it as a qualified storm damage distribution. Another example, a person is ineligible to rollover a periodic payment if the payout period is 10 years or more and thus one cannot repay a qualified storm damage periodic distribution. Since the IRS does not expressly discuss the situation, it is unclear if the once per year rollover rule also applies to qualified storm damage distributions from IRAs. The conservative approach is to assume it does apply.

An individual has 3 years from the day after the day he or she received the qualified storm damage distribution to repay all or part of it to an IRA or other plan to which it could be rolled over. Multiple repayments are permitted. The total amount repaid must equal or be less than the amount of the qualified storm damage distributions. Amounts repaid are treated as a qualified rollover and are not included in income. The way a person reports a repayments on his or her tax return depends on whether the person reported the distributions under the 3-year method or the current year method as discussed below.

If a person elected to include the entire distribution amount in his or her income for the year of receipt, then any amount repaid will reduce the amount to be included in income for the year of distribution. Depending on when the repayment occurs, the individual may need to be file an amended return to re-figure his or her taxable income. For example, a person withdraws $15,000 from her IRA in 2008 and elects to include this amount in her 2008 taxable income. She repays this $15,000 in 2010. She would need to file an amended return for

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2008 in 2010 since the $15,000 is no longer to be included in her 2008 taxable income.

If a person was using the 3 year rule, then any amount repaid in a given year will first reduce the portion of the distribution to be included in income for the year of the repayment. If during a year in the 3-year period, the person repays more than is otherwise includible in income for that year, the excess may be carried forward or back to reduce the amount included in income for that applicable year. Carrying such excess back is permissible only if it is still permissible to file an amended return for that year. Example. Linda withdraws $90,000 from her traditional IRA on November 1, 2008. She has a balance remaining of $40,000. She decides she will use the 3 year rule and she will include $30,000 in income on her 2008, 2009 and 2010 income tax returns unless she makes a repayment. It is assumed on November 10, 2009, Linda repays $45,000 to her IRA and that she makes no other repayments. Linda may handle this repayment in two ways. Her repayment of $45,000 means she will not include in her 2009 income the $30,000 from the prior distribution of $90,000 in 2008. Because her repayment is more than $30,000 she will need to decide whether she will carry the excess repayment of $15,000 to 2008 or whether she will carry it forward to 2010. If she carries it forward, she would include in income in 2010 only $15,000 ($30,000-$15,000). If she carries it back to 2008, she will need to file an amended return for 2008 because her taxable income for 2008 is now $15,000 less.

The IRS has adopted a special rule with respect to the repayment of qualified storm damage distributions from a Roth IRA. Any repayment is first considered to be a repayment of earnings, if any. Any repayment in excess of the earnings is basis. Example. John has $20,000 in his Roth IRA. His basis is $16,000 and his earnings are $4,000. He withdraws the entire $20,000 as a qualified storm damage distribution on September 15, 2008. He elects to include the $4,000 in his income for 2008. In 2010 he repays $15,000 to a Roth IRA. For whatever reason, he does not repay the entire $20,000. In 2010 he will need to file an amended return for 2008 because his taxable income is now $4,000 less. His Roth IRA will now have basis of $11,000 and earnings of $4,000.

Special Rule #4. It probably did not happen often, however, there will have been some individuals who withdrew funds from their traditional IRA or Roth IRA with the intent to use the funds to buy or build a principal residence, but this did not happen because of the midwestern storms. These individuals received their distribution before the storms occurred. These individuals do not qualify to use the 3 year rollover rule applying to distributions after the storms occurred because they took the distribution before the storms. A person may have been outside their 60 day rollover period. If a person received a qualified distribution after May 24, 2008 and before August 29, 2008, then he or she will be granted rollover treatment as long as the re-contribution occurs during the period beginning on November 24, 2008 and ending on February 28, 2009.

Qualified storm damage distributions, when aggregated, must equal $100,000 or less. Distributions in excess of $100,000 (in the aggregate) will not be a qualified storm damage distribution and will be subject to the additional 10% tax, if applicable, and will not receive the other favorable tax treatments.

Which of Iowa's 99 counties are included in the disaster areas and qualify for special tax relief because of storms, tornados and floods beginning on May 25,2008?

The following are included: Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Cass, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Iowa, Jasper, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Lousia, Lucas, Madison, Mahaska, Marion, Marshall, Mills, Mitchell Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Ringgold, Scott, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Worth, and Wright counties. ◆

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Explanation of Law Changes for 401(k) and Other Eligible Retirement Plans and Persons in the Midwestern Disaster Areas

In the preceding article, the special distribution rules for distributions from IRAs were discussed. This article discusses the special rules applying to distributions from employer sponsored plans, including one person plans. In many cases, plan provisions must still be reviewed to determine that the distributions are authorized.

The same four (4) law changes as discussed with respect to IRAs also apply to distributions from a 401(k) or other eligible retirement plan. There are also four (4) additional special rules applying to distributions from an employer plan, but not from an IRA.

Special Rule #1 for ERP. A 401(k) participant is generally eligible to withdraw funds from the 401(k) plan in which he or she participates only if he or she attains age 59½ or separates from service. Some employers do write their 401(k) plans to permit a distribution to a participant who has incurred a hardship. A hardship distribution is ineligible to be rolled over. A participant eligible for a hardship distribution will be able to designate such a distribution as a qualified storm damage distribution. Example. John Doe has made elective deferrals of $20,000 to the 401(k) plan of First State Bank. His total account balance is $40,000 since the employer has made matching contributions and the contributions have realized net earnings. First State Bank is located in Dubuque county, Iowa. The plan provides a participant may receive a hardship distribution if he or she satisfies the requirements. John Doe completes a distribution form and instructs he wishes to take a hardship distribution of $20,000 (i.e. his elective deferral balance) and that he is designating it as a qualified storm damage distribution. The plan administrator would be required to comply with his instruction.

Special Rule #2 for ERP. The standard rule is that the plan administrator must withhold 20% of any eligible rollover distribution which is not directly rolled over. With respect to qualified storm damage distributions occurring before January 1, 2010, an eligible individual within a storm area will not be subject to the mandatory withholding of 20%. The standard non-QRP withholding rules apply. There must be 10% withheld, but the recipient has the right to instruct that no amount be withheld. Example. Julia Hood separates from service with her employer in October of 2008. She withdraws $25,000 from the 401(k) plan of which she is a participant. Generally, the plan administrator would be required to withhold $5,000 (20% of the amount distributed) and Julia would be paid only $20,000. This new law authorizes the plan administrator to distribute the entire $25,000 to Julia, if she so elects. This rule does apply to one person plans.

Special Rule #3 for ERP. A plan may authorize loans to its participants. The plan will define when loans are permissible. Such plans may allow loans in the case of disasters. A loan had to be sufficiently collateralized and a person could only use 50% of his or her vested account balance as collateral. There was also a dollar limit on the loan amount. It was $50,000. A person was allowed to pledge other property as collateral. Most employers, however, wrote the loan policies to limit the loan to 50% of a participant's vested account balance because they did not want to deal with additional collateral. The standard rule is that loans can be made in an amount equal to the lesser of: (1) 50% of the participant's vested account or $50,000 (in general). These rules have been revised to increase the maximum amount which can be borrowed to 100% of the participant's vested account balance, up to a maximum of $100,000 (in general).

Special Rule #4 for ERP. A standard loan rule is that the loan must generally be repaid over a five-year period. The new law delays, for one year, all subsequent loan payments due with respect to an outstanding loan as of May 24, 2008. It appears that any loan payment due to be paid during the period of May 24, 2008 and ending December 31, 2009 is postponed one year, with all subsequent payments changing accordingly.

The law contains a provision that provides that pension plans will remain "qualified" until on or before the last day of the first plan year beginning on or after January 1, 2020, or such later date as the Secretary of the Treasury may prescribe. The IRS will be giving guidance as to how and when amendments may be adopted by sponsoring employers. ◆

An HSA's Payment of Long-Term Care Premiums May Qualify for Tax-Free Treatment – 2009 Chart

The premiums for long-term care coverage that you can treat as qualified medical expenses are subject to limits based on age and are adjusted annually.◆

IF the person was, at the end of 2009, age…	THEN the most you can deduct is…
40 or under	$320
41-50	$600
51-60	$1,190
61-70	$3,180
71 or older	$3,980

Possible Moratorium on RMDs for 2008 and/or 2009

On October 27, 2008, a congressional research entity updated an article dealing with IRAs and 401(k) plans. This article summarizes very well the current law for early withdrawals and required distributions from IRAs and pension plans.

At the end of this article it is mentioned that some members of Congress have asked U.S. Treasury Secretary Henry Paulson to suspend the 50% excise tax for missed RMDs for 2008. The IRS may be considering making this change via a regulatory change versus waiting for the law change to be made by Congress and the President.

The argument for making this change is that affected taxpayers would benefit by this law change because as of the close of business October 24, 2008, the Standard & Poor's 500 index of common stocks had fallen by 40% for the year.

The Bureau of Census has prepared the following chart with respect to individuals subject to the RMD rules.

Almost 5.5 million households are subject to the RMD Rules. 4 million households are in the age 70-79 group. 1.5 million households are in the 80 or older group.

CWF will keep you informed of any developments. As we all know, many taxpayers would never take an IRA distribution if the law did not require it.◆

Table 1. Number of Households Headed by Persons Aged 70 or Older with an IRA or 401(k) Account in 2005
(Number of households, in thousands)

	Total Household Retirement Account Balance				
	Under $50,000	$50,000 to $99,999	$100,000 to $199,999	$200,000 or more	Total
Age of Householder					
70 to 79	1,992	667	597	715	**3,971**
80 or older	915	245	140	223	**1,524**
Household Income					
Under $50,000	2,074	633	345	534	**3,586**
$50,000-$99,999	699	225	279	291	**1,494**
$100,000 or more	135	54	114	112	**415**
Total	**2,908**	**912**	**737**	**938**	**5,495**

Source: Bureau of the Census, Survey of Income and Program Participation.

Note: Total household retirement account balance is the sum of all individual retirement account balances and defined contribution plan balances of all members of the household.

Summary of Federal Tax Collections Before Refunds by Type of Return, FY 2007

Type of Return	Number of Returns	Gross Collections (Millions of $)
Individual income tax	138,893,908	1,366,241
Corporation income tax	2,507,728	395,536
Employment taxes	30,740,592	849,733
Excise taxes	907,165	53,050
Gift tax	252,522	2,420
Estate tax	49,924	24,558
Total		2,691,538

Losses on Roth IRA Investments, Continued from page 8

Your basis is the total amount of contributions in your Roth IRAs.

You claim the loss as a miscellaneous itemized deduction, subject to the 2%-of-adjusted-gross-income limit that applies to certain miscellaneous itemized deductions on Schedule A, Form 1040. Any such losses are added back to taxable income for purposes of calculating the Alternative Minimum Tax.◆

Special Rollover Contribution(s) Arising From Exxon Valdez Litigation.

Any individual who is a plaintiff in the civil action In Re Exxon Valdez (No. 89-095-CV) (HRH)(Consolidated @Alaska) and who receives any qualified settlement income during the tax year may contribute some or all of such income to his or her IRA or other eligible retirement plan of which he or she is a participant (or beneficiary). Qualified settlement income is defined to be any interest earned with respect to the damages awarded plus any punitive damage awards which are otherwise includible in taxable income. The individual may make one or more such contributions for such year. The deadline to make such contributions for most taxpayers will be April 15 of the following year as it is for annual IRA contributions as long as the individual has designated such contribution as being for the prior tax year. Technically, the deadline is the taxpayer's tax filing deadline for such tax year (not including tax extensions). The receipt of qualified settlement income by an individual is deemed to be income attributable to a fishing business and will qualify for special income averaging rules. And such income will not be subject to the self-employment tax or FICA taxes. There is no requirement to contribute the qualified settlement income to an IRA or other eligible retirement plan. However, there is a special contribution limit if such contributions are made. An individual may contribute the lesser of: (1) the amount of that year's qualified settlement income or (2) $100,000 as reduced by the amount of any qualified settlement income contributed to an IRA or other eligible retirement plan in prior years. Why would an individual make such contributions? The general tax rule is that a plaintiff must include in his or her taxable income the interest and the punitive damage portion of a lawsuit. By contributing such funds to a traditional IRA or other nondesignated Roth eligible retirement plan the individual will NOT be required to include such amount in his or her taxable income for the year of receipt. There is a deemed rollover. This is a new type of rollover contribution since the source of the funds was a payment by Exxon or its insurer rather than another IRA or eligible retirement plan. Such funds will not constitute basis within the traditional IRA. So, the individual would be required to include future distributions (and earnings) in his or her taxable income. A qualifying individual will have another choice. He or she may contribute the qualified settlement income to a Roth IRA or a designated Roth account within a 401(k), 403(b) or 457 plan. In such case the individual will be required to include such amount in his or her taxable income for the year of receipt and such amount shall be considered to be basis (or investment in the contract). There is a deemed Roth conversion contribution. This is a new type of Roth conversion contribution. The funds going into the Roth IRA or designated Roth account are not pre-tax dollars in an IRA or 401(k) plan, but are coming from Exxon or its insurer. A qualifying individual also has a third choice. He or she may contribute a portion of such qualifying settlement income to a traditional IRA or other eligible retirement plan and contribute a portion to a Roth IRA or a designated Roth account.

What happens if an individual who is a plaintiff in the In re Exxon Valdez case dies? Any individual who is a beneficiary of the plaintiff's estate and who has acquired the right to receive such qualified settlement income from the plaintiff may also make the special contributions discussed above as long as such individual is the spouse or an immediate relative of the plaintiff. There will certainly need to be a special rollover/conversion certification form for contributing qualified settlement income. CWF is in the process of developing this form. The effective date for these new Exxon Valdez contribution rules is the date the Emergency Economic Stabilization Act of 2008 was signed into law, October 3, 2008.◆

The Pension Digest

HSA Custodian Now Required To Return To Employer Certain HSA Contributions

The HSA custodian/trustee owns the HSA funds on behalf of the HSA account owner. The HSA owner has a nonforfeitable interest in the HSA. Consequently, the IRS had originally ruled in Notice 2004-50 an employer may not recoup erroneous contributions from an employee's HSA or former employee's HSA by having the HSA custodian return such contributions to the employer. It does not matter who was at fault for the erroneous contribution or the reason for the erroneous contribution. There are numerous ways in which an employer can make an erroneous or excess contribution. Such situations normally relate to the fact that an employee becomes HSA ineligible. For example, an employer contributes $2,900 to every employee's HSA for 2008 on January 2, 2008. Employee #2 separates from service in May of 2008 and becomes covered by a non-HDHP. Employee #2 has an excess HSA contribution and is responsible to correct it. An employer may well wish to recover the non-qualifying portion of its HSA contribution, either fully or partially.

This article discusses the recovery by an employer of such erroneous contributions by asking the HSA custodian to return certain HSA contributions. It does not address the subject of the employer being able to recover such contributions pursuant to an employment contract containing provisions allowing for the recovery. In general, as long as the employer makes certain the comparability rules are satisfied, then an employer will generally be able to recover erroneous HSA contributions as long as there is an employment contract provision authorizing such recovery. That is a separate subject and is not discussed in this article.

In July the issued Notice 2008-59. The IRS creates two limited exceptions allowing an employer to recoup its erroneous contributions. These new rules apply immediately.

The first exception – if it is determined an employee (or former employee) was never eligible for an HSA, then the employer is allowed to correct its contribution error by instructing the HSA custodian to return the nonqualifying contribution which had been made to the employee's HSA or former employee's HSA.

The second exception – if it is determined that an employer has made an HSA contribution to an employee's HSA or former employee's HSA which exceeds the current year's family contribution limit (either $5,800 and $6,700 for 2008 depending on the applicability of any catch- up contribution), then the employer is allowed to correct its contribution error by instructing the HSA custodian/trustee to return to the employer the nonqualifying or excess contribution amount.

These are the only two exceptions to the general rule that the HSA account owner's HSA interest is nonforfeitable. That is, the funds are owned on behalf of the HSA account owner and cannot be given to any other party, whether that party is the Employer or the HSA custodian/trustee.

There are no other exceptions allowing an employer to instruct the HSA custodian to pay it a certain amount so that it can recoup erroneous contributions from an employee's HSA or former employee's HSA.

With respect to the first exception, it is not stated expressly, but it is implied that the HSA custodian will need to return the excess or ineligible contribution amount only to the extent that the amount is still within the HSA. The IRS furnished an example. "In February 2008, Employer L contributed $500 to an HSA account of Employee M, reasonably believing the account to be an HSA. In July of 2008, Employer L first learned that Employee M's account was not an HSA because Employee M has never been an eligible individual under section 223(c)." Assuming the $500 (or some lesser amount) was still in the account in July of 2008, the Employer may request the return of the contribution. In fact, the IRS indicated in Q & A 23 that the amount which needed to he returned was the excess contribution amount as increased by an earnings and as reduced by any administrative fees authorized to be paid by the HSA. If the employer does not recover these funds by December 31, 2008 from the HSA custodian, then it will need to revise its payroll data so that this erroneous excess contribution amount is included on the employee's 2008 W-2 Form. For example, Employer L first discovers the error in July of 2009 rather than July of 2008. Employer L must issue a corrected 2008 Form W-2 for Employee M who will be required to file a 2008 amended tax return. The contribution amount which was originally excluded from Employee's income will now need to be included in his or her income.

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HSA Custodian Now Required,
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This requirement to change its payroll data is a change from previously issued guidance. The general rule had originally been stated to be that in all cases if an employer had a reasonable belief that it was able to make an HSA contribution, then it was not required to change its original treatment of excluding such amount from income even if it had learned of the error.

With respect to the second exception, the IRS does not furnish an example. The IRS simply states, if it is determined that an employer has made an HSA contribution to an employee's HSA or former employee's HSA exceeding the current year's family contribution limit (either $5,800 and $6,700 for 2008 depending on the applicability of any catch-up contribution), then the employer is allowed to correct its contribution error by instructing the HSA custodian/trustee to return to the employer the nonqualifying or excess contribution amount. Again, if the employer does not recover these funds in this fashion by December 31, 2008, then it will be required to correct the 2008 W-2 form for the employee. The IRS has been very consistent that it expects and requires the HSA custodian to follow the HSA plan agreement which limits the contribution amount for annual contributions to the family limit.

Financial institutions need to be aware that situation #2 presents some liability issues not present in situation #1. Again, what happens if the employer contributes more than the family limit and the financial institution returns this excess to the employee rather than the employer? May the employer assert that it is entitled to be repaid the excess and that the HSA custodian must seek repayment from the HSA owner? This argument certainly can be made. The IRS has not made clear what its position would be on this issue. We strongly suggest that an HSA custodian implement internal procedures to make sure any such excess is returned to employer and not to the employee.

A financial institution acting as an HSA custodian many times will also be an employer which had made contributions to its employees' HSAs. Does a different rule apply in this situation? We at CWF believe the same rules apply even if the financial institution is both the HSA custodian and the employer. If the IRS had wanted to adopt a different rule when the employer and the financial institution are the same entity, the IRS would have done so.

Conclusion. The IRS has created two exceptions to the nonforfeitable rule so that an HSA custodian is required to return two types of erroneous contributions to an employer. As with many issues, additional guidance will be needed as there are many unanswered questions arising from these two new exceptions. The 2008 IRS instructions for Forms 5498-SA and 1099-SA do not address these subjects at this time.

Recognizing Losses on Traditional IRA Investments

If you have a loss on your traditional IRA investment, you can recognize (include) the loss on your income tax return, but only when all the amounts in all your traditional IRA accounts have been distributed to you and the total distributions are less than your unrecovered basis, if any.

Your basis is the total amount of the nondeductible contributions in your traditional IRAs.

You claim the loss as a miscellaneous itemized deduction, subject to the 2%-of-adjusted-gross-income limit that applies to certain miscellaneous itemized deductions on Schedule A, Form 1040. Any such losses are added back to taxable income for purposes of calculating the alternative minimum tax.◆

Recognizing Losses on Roth IRA Investments

If you have a loss on your Roth IRA investment, you can recognize the loss on your income tax return, but only when all the amounts in all of your Roth IRA accounts have been distributed to you and the total distributions are less than your unrecovered basis.

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