The Pension Digest

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

Three Planning Concepts – Why More Individuals Will Want Profit Sharing or One Person 401(k) Plans!

An individual wants to accumulate as large a balance as possible within a Roth IRA and/or a designated Roth account within a 401(k) plan or similar plan. Why? There are not many investments that generate tax-free income year-after-year.

1. An individual whose income is too high is ineligible to make regular Roth IRA contributions. There is no income restriction for making designated Roth contributions to a 401(k) plan. An individual must participate in a 401(k) plan written to authorize the making of designated Roth contributions. Either a new plan must be established or an existing plan must be amended to include this feature.

2. There will be individuals having traditional IRAs containing both taxable funds and nontaxable funds. An individual will be less inclined to convert such funds because any conversion will contain both a taxable portion and a nontaxable portion. Taxes must be paid on the taxable portion. For example, John Doe has $120,000 of taxable funds and $30,000 of nontaxable funds in his traditional IRA or IRAs. If he converts the entire $150,000, then he will pay taxes on the $120,000. If he converts less than $150,000, then 80% ($120,000/$150,000) will be taxable and 20% will be nontaxable.

   However, with some planning, this pro-rata rule need not apply. The rollover rules prohibit rolling over any nontaxable funds within an IRA into a qualified plan. That is, the $30,000 may not be rolled over into a qualified plan. Therefore, John will find it worthwhile to roll over his $120,000 into his profit sharing plan. And if he does so, then the remaining $30,000 within the traditional IRA is nontaxable and is eligible to be converted to a Roth IRA with no taxes owing.

3. It is generally thought that from 1987-2009 few individuals chose to make non-deductible traditional IRA contributions even though they were eligible to do so. Presumably, they did not think the economic benefit was sufficiently large to induce them to make the nondeductible contribution. Many of these individuals had high incomes and were ineligible to do a conversion. Now that everyone with funds in a traditional IRA is eligible to convert traditional IRA funds, more individuals will start making nondeductible contributions and then convert them immediately to a Roth IRA. ◆

Preparing Two 1099-R Forms is Never Correct When There is Federal Withholding

We are again being asked questions whether it is proper to prepare two Form 1099-R's when there has been a distribution where there has been federal income tax withholding.

No. It is not correct. Only one Form 1099-R is to be prepared. There is not to be a separate Form 1099-R to report the Federal income tax withholding. For whatever reason, some IRA software systems have been written to generate two (2) 1099-R forms whenever there is Federal withholding . Such systems need to be updated. The IRS could issue fines for preparing two 1099-R forms when only one should be prepared. It is easiest to discuss this topic by using an example.

Example. John Doe had gone to First Bank, his IRA custodian, on December 18, 2009. John Doe is age 57. He had an inherited IRA with First Bank arising from his brother, James Doe. John withdrew $12,000 and he instructed to withhold $6,000 for federal purposes, but no state withholding. It is January 18, 2010 and the bank's 2009 1099-R Forms have been generated. As set forth in the adjacent column, the bank's computer system generated two (2) 1099-R Forms. Let's first view how the correct Form 1099-R should be prepared.

The Correct Form 1099-R

9898 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code: John Doe
1 Gross distribution $12000.00
OMB No. 1545-0119 — 2009 — Form 1099-R
Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
2a Taxable amount $
2b Taxable amount not determined X — Total distribution ☐
Copy A For Internal Revenue Service Center
PAYER'S federal identification number — RECIPIENT'S identification number
3 Capital gain (included in box 2a) $
4 Federal income tax withheld $6000.00
File with Form 1096.
RECIPIENT'S name
5 Employee contributions /Designated Roth contributions or insurance premiums $
6 Net unrealized appreciation in employer's securities $
For Privacy Act and Paperwork Reduction Act Notice, see the 2009 General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G.
Street address (including apt. no.)
7 Distribution code(s) 4 — IRA/SEP/SIMPLE X
8 Other $ %
City, state, and ZIP code
9a Your percentage of total distribution %
9b Total employee contributions $
1st year of desig. Roth contrib.
10 State tax withheld $ $
11 State/Payer's state no.
12 State distribution $ $
Account number (see instructions)
13 Local tax withheld $ $
14 Name of locality
15 Local distribution $ $
Form 1099-R — Cat. No. 14436Q — Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

2009 Form 1099-R – #1 (Incorrect)

9898 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code: John Doe
1 Gross distribution $6000.00
OMB No. 1545-0119 — 2009 — Form 1099-R
Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
2a Taxable amount $
2b Taxable amount not determined X — Total distribution ☐
Copy A For Internal Revenue Service Center
PAYER'S federal identification number — RECIPIENT'S identification number
3 Capital gain (included in box 2a) $
4 Federal income tax withheld $
File with Form 1096.
RECIPIENT'S name
5 Employee contributions /Designated Roth contributions or insurance premiums $
6 Net unrealized appreciation in employer's securities $
For Privacy Act and Paperwork Reduction Act Notice, see the 2009 General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G.
Street address (including apt. no.)
7 Distribution code(s) 4 — IRA/SEP/SIMPLE X
8 Other $ %
City, state, and ZIP code
9a Your percentage of total distribution %
9b Total employee contributions $
1st year of desig. Roth contrib.
10 State tax withheld $ $
11 State/Payer's state no.
12 State distribution $ $
Account number (see instructions)
13 Local tax withheld $ $
14 Name of locality
15 Local distribution $ $
Form 1099-R — Cat. No. 14436Q — Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

The gross amount ($6000) is shown in box 1a and box 2a is blank. There is no withholding shown in box 4. It is left blank. This form has the reason code "4" indicating this was a death distribution. The errors are – the distribution amount was $12,000 and there was $6000 of Federal withholding.

2009 Form 1099-R – #2 (Incorrect)

9898 VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code: John Doe
1 Gross distribution $6000.00
OMB No. 1545-0119 — 2009 — Form 1099-R
Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
2a Taxable amount $
2b Taxable amount not determined X — Total distribution ☐
Copy A For Internal Revenue Service Center
PAYER'S federal identification number — RECIPIENT'S identification number
3 Capital gain (included in box 2a) $
4 Federal income tax withheld $6000.00
File with Form 1096.
RECIPIENT'S name
5 Employee contributions /Designated Roth contributions or insurance premiums $
6 Net unrealized appreciation in employer's securities $
For Privacy Act and Paperwork Reduction Act Notice, see the 2009 General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G.
Street address (including apt. no.)
7 Distribution code(s) 1 — IRA/SEP/SIMPLE X
8 Other $ %
City, state, and ZIP code
9a Your percentage of total distribution %
9b Total employee contributions $
1st year of desig. Roth contrib.
10 State tax withheld $ $
11 State/Payer's state no.
12 State distribution $ $
Account number (see instructions)
13 Local tax withheld $ $
14 Name of locality
15 Local distribution $ $
Form 1099-R — Cat. No. 14436Q — Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

The gross amount ($6,000) is shown in box 1a, box 2a is blank and $6,000 is shown in box 4 (federal withholding). This form has the reason code "1" indicating this was a premature distribution, no known exception. The main problem with the two form approach in the above example is that the use of Code "1" incorrectly tells the IRS and the recipient that the 10% tax is due. The recipient will be required to explain on his tax return why he does not owe the 10% tax. ◆

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Possible Expansion of the Saver's Tax Credit

The January newsletter mentioned the fact that the Obama administration was proposing requiring certain employers to sponsor an Automatic IRA program. Employers who do not sponsor some type of retirement plan for their employees would be required to set-up a direct deposit IRA program. 3% of an employee's compensation would automatically be withheld from their employees' paychecks unless they elected to not participate or they elected to have a larger percentage withheld.

The Obama administration is also proposing to expand the Saver's Tax Credit so that it will benefit many more families. The 50% credit would apply to the first $1,000 of contributions by families having incomes equal to or less than $65,000. Thus, the credit would be $500. A smaller credit would be given to families having income less than $85,000. This credit would be refundable. Presumably, it would apply to both married individuals filing jointly and head of households.

The adjacent charts explains the 2009 and 2010 limits. A family qualifies for the 50% credit only if its income is less than $33,000 for 2009 if filing jointly, and $24,750 if filing as a head of household. Certainly many more families would make IRA and 401(k) contributions if the income limits were increased to $65,000 and $85,000. Making the credit refundable would also increase its use.

There is also some discussion that the Saver's Tax Credit rules need to be simplified. We certainly agree. Many individuals are still unaware of the Saver's Tax Credit and/or don't understand it. Many individuals don't make IRA and 401(k) contributions even though it would be benefit them. IRS research has determined that 34% of individuals who were eligible for the credit failed to claim the credit on their tax return. ◆

Saver's Credit Limits for 2009

The applicable percentage for 2009 is based on modified adjusted gross income (AGI) and your tax-filing status, and is determined by the following table:

Joint Return

AGI Over	AGI Not Over	Percentage
$0	$33,000	50%
$33,000	$36,000	20%
$36,000	$55,500	10%
$55,500	N/A	0%

Head of Household

AGI Over	AGI Not Over	Percentage
$0	$24,750	50%
$24,750	$27,000	20%
$27,000	$41,625	10%
$41,625	N/A	0%

Other Filers Including Married, Filing Separately

AGI Over	AGI Not Over	Percentage
$0	$16,500	50%
$16,500	$18,000	20%
$18,000	$27,750	10%
$27,750	N/A	0%

Saver's Credit Limits for 2010

The applicable percentage for 2010 is based on modified adjusted gross income (AGI) and your tax-filing status, and is determined by the following table:

Joint Return

AGI Over	AGI Not Over	Percentage
$0	$33,500	50%
$33,500	$36,000	20%
$36,000	$55,500	10%
$55,500	N/A	0%

Head of Household

AGI Over	AGI Not Over	Percentage
$0	$25,125	50%
$25,125	$27,000	20%
$27,000	$41,625	10%
$41,625	N/A	0%

Other Filers Including Married, Filing Separately

AGI Over	AGI Not Over	Percentage
$0	$16,750	50%
$16,750	$18,000	20%
$18,000	$27,750	10%
$27,750	N/A	0%

The H&R Block Lawsuit Settlement and the Saver's Tax Credit

In 2006 the state of New York sued H&R Block alleging various fraudulent acts under New York statutory law and the breach or its fiduciary duties under New York common law. H&R Block failed to adequately disclose numerous fees and its marketing materials and other IRA disclosures were not as comprehensive as required under New York fraud law and were not furnished on a timely basis.

The relief sought was: (1) pay civil damages in an amount no less than $250 million ($500 per IRA x 500,000 IRAs); (2) disgorge all profits related to the fraudulent IRA activities; (3) pay the actual damages incurred by each customer or make restitution to such individuals regarding the improper fees; (4) pay punitive damages; (5) issue a permanent injunction to stop these activities; and (6) pay the state's costs for bringing this action, including the state's legal fees.

Without admitting any of the claims, H&R Block entered into a settlement agreement with the State of New York. Here are the settlement terms as summarized by CWF based on the discussion on the Attorney General's website.

1. H&R Block will refund all fees charged to all customers who purchased an Express IRA since 2000. A court appointed administrator will contact the eligible IRA accountholders. Such accountholders will need to file a claim. It is estimated that H&R Block will refund fees between 11.4 million and 19.4 million. This amount is a small portion (5-8%) of the $250,000,000 claimed as the civil damages.
2. H&R Block will pay the state of New York $750,000. This is to cover various costs, fines and fees.
3. H&R Block will convert all customers with an Express IRA to an IRA with no fees.
4. H&R Block will change its disclosures with respect to fees and other terms and implement other business reforms.

Of course, Attorney General Cuomo broadcast that a great victory had been won. His media page had the title, "Multi-Million Dollar Settlement With H&R Block For Its Fraudulent Marketing of Fee-Laden IRAs to Low- and Middle- Income Families." We think it is H&R Block who won with this settlement. Our March 2006 newsletter had a detailed article. The Wall Street Journal had reported that the state of New York would have agreed to settle for $30 million prior to commencing the lawsuit. We thought there were numerous deficiencies in the H&R Block disclosures and that the disclosures were furnished late. We had suggested that it would have been prudent for H&R Block to settle for $30 million. It certainly appears that H&R Block knew what it was doing by not accepting the $30 million settlement offer.

We had also commented that we thought the State of New York had missed the point when its sole focus was on "fees" and that it did not appreciate the tax and economic value realized by a person who opened an IRA when they qualified for the Saver's Tax Credit. For example, a person may very well be willing to pay $10-$40 of fees if he or she receives a tax credit of $100-$1,000. The only way one gets the tax credit is to make a contribution to a traditional IRA, Roth IRA, 401(K) plan, or SIMPLE IRA. If the individual does not have such an IRA, then he or she needs to establish one and H&R Block should not be penalized by providing the IRA plan agreement. The state of New York tried to argue that the fee issue was more important than the Saver's Tax Credit issue. It wasn't.

A financial institution is doing a very good thing when it tries to inform its customers and the public via brochures and newsletters about the Saver's Tax Credit rules. These rules are certainly designed to help those with lower and modest incomes. If the changes being proposed by President Obama are enacted, many more IRA contributions will be made. It would be good for the IRA business. ◆

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What to Do – A Person Wants to Make a Charitable IRA Distribution in 2010

Right now a distribution cannot qualify as a charitable IRA distribution. IRA accountholders need to be informed of this fact.

Up until the laws authorizing a charitable IRA distribution expired on 12/31/09, a person age 70½ or older was able to direct his or her IRA custodian to withdraw an amount of up to $100,000 from his or her IRA and have such proceeds sent directly to a qualifying charitable organization. The distribution was tax free if certain rules were met.

What made this so attractive?

The majority of tax filers over age 70½ use the standard deduction when filing their taxes, making them unable to claim a deduction for their charitable contributions. Individuals were allowed to withdraw funds from their IRA and contribute them to the eligible charity of their choice. <u>These contributions were then excluded from their income.</u> This exclusion, in effect, was the equivalent of claiming a tax deduction. Needless to say, this provision was also a great benefit for many charities. Since the maximum contribution/deduction amount was $100,000, this benefit was substantial. <u>These contributions were also considered part of the taxpayer's required minimum distribution for the year — another benefit.</u>

What's the outlook for 2010?

It is very uncertain that there will be new legislation authorizing charitable IRA distributions for 2010. Tax revenues are needed and this provision reduces revenues. The most conservative approach is for a person to wait until a new tax law is enacted authorizing such distributions again. For those individuals over age 70½ and who are willing to assume the risk of a new law being enacted, they could instruct their IRA custodian to send their distribution amount directly to a qualifying charitable organization. If the law would be enacted on a retroactive basis (i.e. for tax year 2010), then it would qualify as a qualified charitable IRA distribution. These individuals must act on the advice of their tax advisors. ◆

Change to 5-Year Rule Because of 2009 RMD Waiver

The IRS has stated that the 5-year rule has been changed as a result of the 2009 RMD waiver. An IRA beneficiary who elects the 5-year rule is required to withdraw all of the funds from a traditional IRA or Roth IRA by December 31 of the year containing the fifth anniversary of the accountholder's death. There is no requirement to withdraw any amount in any year except the fifth year. The inheriting beneficiary generally has total discretion to withdraw whatever amount he or she wishes.

Illustration. Jane Doe died in May of 2007 at the age of 67. Her son, Mark, age 43 in 2007, had elected the 5-year rule as the beneficiary. The balance of Jane's IRA as of 12-31-06 had been $28,600. The balance as of 12-31-09 was $31,900. He has not yet withdrawn any funds. What rules apply to his situation and what options does he have?

Had there been no RMD waiver for 2009, his 5-year RMD schedule would have been:

2007	(year of his mother's death, no distribution required since she died before her required beginning date)
2008	Any withdrawal amount permissible
2009	Any withdrawal amount permissible
2010	Any withdrawal amount permissible
2011	Any withdrawal amount permissible
2012	Account must be closed by 12-31-12

With the RMD waiver for 2009, his 5-year RMD schedule changes as follows. In essence, he gets an additional year to close out the inherited IRA.

2007	(year of his mother's death, no distribution required since she died before her required beginning date)
2008	Any withdrawal amount permissible
2009	Any withdrawal amount permissible, but the year is not considered for purposes of the 5-year rule;
2010	Any withdrawal amount permissible
2011	Any withdrawal amount permissible
2012	Any withdrawal amount permissible
2013	Account must be closed by 12-31-13 ◆

How is the Life Distribution Calculation for a Beneficiary for 2010 Affected, if at all, by the 2009 RMD Waiver?

The IRS has written very little on this subject. Quite a few people have asked the question, if a beneficiary would have used a divisor of 15.2 in 2009, do they now in doing the 2010 calculation use 15.2 or do they use 14.2?

The answer is 14.2. We understand the rule to be – the RMD calculation for 2010 is made using the standard life distribution rule.

Illustration. Tom Smith had died in 2006 at the age of 78. His beneficiary of his traditional IRA was his daughter, Sarah, born on 3-13-1951. She commenced RMDs in 2007. She took her RMD for 2008. The 2009 RMD was waived. How is her RMD calculated for 2010 and subsequent years?

The standard formula/calculation applies. The balance as of December 31, 2009 is divided by the "adjusted" divisor from the Single-Life Table. The RMD waiver for 2009 does not impact these calculations.

Sarah was age 56 in 2007, the year after her father died. The factor from the Single Life Table was 28.7. Therefore, her divisors for future years will be:

2007	28.7	
2008	27.7	
2009	26.7	(not used due to RMD waiver)
2010	25.7	
2011	24.7	
2012	23.7	
2013	22.7	
Etc.	1.0	less than the number above

◆

The Questions to be Asked to Administer a Nonspouse Inherited Traditional IRA

Many traditional IRAs are now being inherited by nonspouse beneficiaries. Asking and answering the following questions will simplify the administration of these inherited IRAs.

1. When was the deceased IRA accountholder born?

2. When did the deceased IRA accountholder die?

From the answers to these two questions, one can determine if the decedent died before on or after his or her required beginning date.

3. If the decedent died on or after his or her required beginning dated, had the decedent been paid his or her RMD for the year of death or is there a portion of his or her RMD which needs to be distributed to the beneficiary(ies)?

If the entire RMD had been paid, then there is no remaining RMD for the year of death needing to be distributed.

If the entire RMD had NOT been paid to the decedent prior to his or her death, then a beneficiary must be paid his or her share of the remaining RMD by December 31 of that year.

For the years after the year of the decedent's death, RMDs for each nonspouse beneficiary must be determined using the following rules. It is assumed the beneficiary will qualify to use the separate accounting rules applying to inherited IRAs.

If the decedent died on or after his or her required beginning date, the beneficiary will need to take at least the RMD amount for each year following the year of the death. The beneficiary may certainly take more than the RMD, including a lump sum. The five year rule never applies when the decedent dies on or after the required beginning date.

The standard RMD formula is used to calculate each year's RMD, except the single life table is to used to calculate the initial divisor based on the age of the beneficiary rather than the uniform lifetime table.

4. What is the date of birth of each beneficiary? This will allow the determination of each beneficiary's lie expectancy in the year after the year the accountholder died?

Continued in previous column

Nonspouse Inherited IRAs, Continued from Adjacent Column

To determine the divisor for subsequent years, one is subtracted from the initial factor for each subsequent year.

If the decedent died before the required beginning date, the beneficiary will need to take at least the RMD amount over his or her life expectancy as calculated as described above, unless the beneficiary elects the five year rule. ◆

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Compensation Limits and SIMPLE-IRAs

The SIMPLE-IRA rules either require an employer to make a matching contribution equal to an employee's compensation multiplied by 3% (in some situations, 1% or 2% is permissible, and there are limits as discussed below which apply) or a nonelective contribution equal to an employee's compensation multiplied by 2%.

Note that the 2% nonelective contribution must be made on behalf of all eligible employees. The law expressly provides that compensation for this purpose is limited to $200,000 as indexed. For 2009 and 2010 this amount is $245,000. The effect of this limit is that the Qualified Non-Elective Contribution (QNEC) for any person earning $245,000 or more is restricted to $4,900. Such a rule, in effect, discriminates against the highly-compensated employees.

The matching contribution is only made to those employees who make salary-reduction contributions. The law does NOT provide an express limit on compensation for purposes of applying the rules which apply to an employer making a matching contribution. Such a rule also has the effect of discriminating against those employees earning over $200,000. This is illustrated below.

The employer's matching contribution is the lesser of: (1) the statutory limit which applies to the person; or (2) the amount of the salary reduction contribution made by the employee. In addition, the employer's matching contribution percentage is limited to being the employee's salary reduction percentage.

The statutory salary reduction limit has changed over the past few years and will be changing for the next couple of years:

	Under Age 50	Age 50 and Older
2000	$6,000	$6,000
2001	6,500	6,500
2002	7,000	7,500
2003	8,000	9,000
2004	9,000	10,500
2005	10,000	12,000
2006	10,000	12,500
2007	10,500	13,000
2008	10,500	13,000
2009	11,500	14,000
2010	11,500	14,000

The following examples illustrate these rules/limits.

Example #1. Laura is a SIMPLE-IRA participate. She is 53. Her compensation for 2009 is $60,000. Her employer set the matching contribution at 3%. Laura makes a salary-reduction contribution of $12,000. Her salary reduction contribution percentage is 20% ($12,000/$60,000). The matching contribution which her employer must make is $1,800 ($60,000 x 3%) since this is less than the statutory amount of $14,000 or the amount she deferred of $12,000.

Example #2. Kelly is a SIMPLE-IRA participant. She is 51. Her compensation for 2009 is $60,000. Her employer set the matching contribution at 3%. Kelly makes a salary reduction contribution of $1,500. The matching contribution which her employer must make is $1,500. Her salary reduction percentage was only 2.5% of her compensation ($1,500/$60,000). The employer is only required to match her required salary-reduction percentage if it is less than the set percentage of 3% (or 1% or 2%, if applicable).

Example #3. Nancy is a SIMPLE-IRA participant. She is 55. Her compensation for 2009 is $100,000. Her employer set the matching contribution at 3%. Nancy makes a salary-reduction contribution of $9,000. Her salary reduction contribution percentage is 9% (9,000/100,000). The matching contribution which her employer must make is $3,000 (100,000 x 3%).

Example #4. Cheryl is a SIMPLE-IRA participant. She is 57. Her compensation for 2009 is $400,000. Her employer set the matching contribution at 3%. Laura makes a salary reduction contribution of $14,000. Her salary reduction contribution percentage is 3.50% ($14,000/$400,000). The matching contribution which her employer must make is $12,000 (3% x $400,000).

Originally, the salary reduction limit was $6,000. This meant the employer's match would never exceed $6,000 regardless of the employee's compensation. Since the employer was only required to match up to $6,000, the practical effect was that compensation was limited to $200,000 ($6,000 = "X" multiplied by 3%).

The effect of the increase in the salary-reduction limit is to increase the employers match with respect to those employees who earn more than $200,000. For example, if the applicable matching rate is 3%, and an employee has a salary reduction of $8,000, then the employer will have

Continued on page 8

SIMPLE-IRAs
Continued from page 7

to make a matching contribution of $8,000 only if the employee has compensation of $266,667 ($8,000/3%) or more. If the employee's compensation was $200,000, the employer's match would be $6,000 ($200,000 x 3%).

Conclusion. The law does not expressly provide a compensation limit for SIMPLE-IRA matching contributions. There is a $245,000 limit (as indexed) for the employer's qualified nonelective contributions. There is, however, an indirect compensation limit for the matching contribution determined as follows: the current year's salary-reduction limit for a person divided by 3% (or the applicable limit, if less than 3%). ◆

IRS Reporting Forms For HSAs

The purpose of this article is to discuss the deadlines and other requirements for furnishing the two (2) HSA reporting forms required to be furnished by the HSA custodian to the HSA owner. The rules are similar to the rules for IRA reporting forms, but there are some differences.

Required Form #1 – 2009 Form 1099-SA (Distributions From an HSA).

This form must be prepared for each reportable distribution. All distributions are reportable except for transfers and mistaken distributions. There is no $10.00 limit. A separate Form 1099-SA must be prepared for each separate reason code. That is, if a person has normal HSA distributions (reason code 1) and also the withdrawal of excess contributions (reason code 2), then two Form 1099-SAs must be prepared.

This form must have been furnished or mailed by Monday, February 1, 2010 since January 31, 2010 fell on Sunday.

Required Form #2 - 2009 Form 5498-SA (HSA, Archer MSA, or Medicare + Info)

HSA custodian must prepare and file the 2009 Form 5498-SA for each HSA owner that maintained an HSA with the HSA custodian during 2009 unless that person did not make a reportable contribution and also closed the HSA during the year. That is, the HSA custodian must prepare the 2009 Form 5498-SA if the HSA owner either made a reportable contribution or had a FMV as of December 31, 2009.

The 2009 Form 5498-SA must be furnished or mailed by Monday, June 1, 2010 since May 31, 2010 also falls on Sunday.

The Optional Reporting Form – 2009 HSA Fair Market Value Statement.

An HSA custodian may, but is not required to provide to HSA owners a 2009 FMV statement by January 31, 2010 (February 1, 2010 since the 31st is a Sunday). With IRAs the FMV statement (or a Form 5498) must be furnished by January 31. This is not the rule for HSAs where the preparation of the FMV statement in January is optional.

If the HSA custodian chooses as a customer service to furnish a 2009 FMV statement during January to April 2010 and the HSA owner made no reportable contributions, then the HSA custodian need not furnish the 2009 Form 5498-SA to report zero contributions.

See the Statement to Participants on page 2 of the 2009 Instructions for Forms 1099-SA and 5498-SA.

We at CWF recommend furnishing the FMV statement in January or early February as an excellent customer service. ◆