The Pension Digest

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ALSO IN THIS ISSUE –

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

IRS Repeals Use of Letter-Forwarding Program for IRAs and Pension Plan

In Rev. Proc. 2012-35 the IRS has chosen to revise Rev. Proc. 94-22 by removing from the purpose section letters being sent by IRA custodians and pension plan trustees to "lost" individuals. The IRS cites the internet and various relocator resources as justifying the discontinuance of its IRA/pension letter forwarding program. The technical change is - returning funds to a person no longer falls within the definition of a "humane" action and the IRS has changed the definition accordingly. That is, the IRS will not forward letters if the sole purpose of the letter is to contact a "missing person" so he or she may be paid IRA or pension funds. The IRS seems to have a strange definition of what it means to be humane in a hard economy.

IRA custodians sometimes lose contact with IRA accountholders or inheriting beneficiaries. Trustees of pension plan experience similar problems with former employees. In 1994 the IRS established a procedure where it would forward a letter to an individual on behalf of an IRA custodian or a plan trustee. In essence, the letter from the financial institution to the individual informed him or her to contact the institution as he or she had IRA funds or pension funds at the institution and the institution wished to pay these funds to the individual.

It appears that this change is being made to lower expenses. As an alternative, the IRS could have increased its fees.

The IRS will process letters requesting letter-forwarding services under Rev Proc. 94-22 if postmarked by August 30, 2012. If postmarked on and after August 31, 2012, then the IRS will use the procedures set forth in Rev. Proc. 2012-35.

On August 31, 2012, CWF was sent an email from the IRS under its IRS Guidewire program wherein tax practitioners are sent IRS guidance in advance of its publication in the Internal Revenue Bulletin. Note that CWF was notified on August 31, the day after the August 30 deadline. It is unfortunate that this letter forwarding program has been discontinued. It was one tool which allowed an IRA custodian or pension plan trustees to find some "unlocated persons" and to pay them their account balances.

Termination of SEP-IRA Plans and SEP-IRAs

SEP-IRA plans were first authorized in 1978. A SEP-IRA plan is a unique type of employer sponsored retirement plan. Any employer may sponsor a SEP-IRA plan, including a one person person. The maximum contribution for an eligible individual is $50,000 for 2012. Many times the acronym SEP is used for SEP-IRA plan.

SEP-IRA plans are relatively simple plans. However, there are various topics which individuals find confusing. IRS

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Special IRA Rollovers for Certain Delta Employees

Some companies are apparently sufficiently large that they are able to obtain their own special rollover rules.

Set forth below is a discussion of special rollover rules for certain Delta employees. These special rules only existed for 6 months of 2012 and they expired as of August 13, 2012. This newsletter is being written after August 13, 2012. We apologize for not informing readers sooner, but the IRS did not furnish any guidance on these new special rollover rules.

Some of CWF's discussion was taken from the summary as written by the Delta MEC Retirement and Insurance Committee.

Public Law 112-95 was enacted on February 14, 2012. This law is titled, "FAA Modernization and Reform Act of 2012." Title XI of this law deals with various tax topics. One of those topics was discussed in section 1106 of Title XI, Rollover of amounts received in airline carrier bankruptcy.

The 2012 FAA law grants two special rollover rights.

First, it allows an airline employee who received "an airline payment amount" to now rollover such payment amount into a traditional IRA. This payment was originally taxable. Making such a rollover now would mean the individual could file an amended return for the earlier year and be entitled to a refund since the distribution amount(s) would no longer taxable in the earlier year(s).

Secondly, it allows a person who previously had rolled over an airline payment amount into a Roth IRA to now move it into a traditional IRA. The individual would have included this payment in their income and paid tax on it. With the market downturn some individuals would benefit by undoing the conversion by moving the funds to a traditional IRA. That is, a recharacterization is bing authorized well-after the normal deadline. Such an individual could also file an amended return and be eligible for a refund of taxes paid in an earlier year.

These two types of special rollovers had to be completed by August 13, 2012, one hundred eighty days after February 14, 2012 (the date of enactment). It appears that the Delta Committee sent out a number of reports on the new rollover rules. In the report of July 13, 2012,it is stated twice that the deadline for such rollovers is August 13, 2012.

The Delta individual then has until April 15, 2013 to file amended tax returns for the year(s) in which the airline payments were made. The Delta summary indicates that some IRS personnel are not aware of the law change and so there has been some difficulties in the IRS processing of the amended tax returns. It is stated that some IRS offices have started to process the amended returns and a number of individuals had received refunds.

CWF checked the IRS website for information on these new rollover rules and we found no IRS guidance. We receive frequent emails from the IRS on various tax topics, but no email on the special Delta rollover rules.

None of the IRS publications discussing rollovers have been revised to discuss these special rules.

There is no discussion of these special rollover rights in the IRS instructions for the 2012 Forms 1099-R and 5498. The IRS posted such instructions on January 29, 2012.

In summary, during the 6 month period from February 12, 2012 to August 13, 2012 certain Delta employees became eligible to make special rollovers. Hopefully, the IRS will furnish guidance as to how these rollovers are to be reported on the 2012 Form 5498, if at all.

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IRS Needs to Update Form 5305-R and Form 5305-RA

The governing rule for IRA and pension plans is that administrators, trustees and individuals must act in accordance with the provisions set forth in the plan agreement.

CWF was recently asked why we had not updated various dollar amounts set forth in CWF's Roth IRA plan agreement. The reason is – the first part of CWF's

Roth IRA form is a reprinting of the IRS Model Form 5305-RA and the second portion is written by CWF. The CWF portion does set forth limits applying to 2011 and 2012.

The IRS last amended its Roth IRA plan agreement forms in February of 2002. These forms drastically need to be revised or updated by the IRS. One wonders when the IRS will decide to update them. The information set forth in Article II is very out-of-date. It does not comply with existing law. The conversion rules no longer apply as they were repealed effective January 1, 2010. The AGI limits haves increased substantially due to the annual cost of living adjustments. The IRS language does not discuss the limits applying to those individuals who file as a qualifying widower, head of household, or married filing separately when the spouses did not live with each other at any time during the year.

Article II of the 2002 version is set forth below:

Article II

1. The annual contribution limit described in Article I is gradually reduced to $0 for higher income limits. For a single depositor, the annual contribution is phased out between adjusted gross income (AGI) of $95,000 and $110,000; for a married depositor filing jointly, between adjusted gross income (AGI) of $150,000 and $160,000; and for a married depositor filing separately between $0 and $10,000.

In the case of a conversion, the custodian will not accept IRA Conversion Contributions in a tax year if the depositor's AGI for the tax year the funds were distributed from the other IRA exceeds $100,00 of if the depositor is married and files a separate return. Adjusted gross income is defined in section 408A(c)(3) and does not include IRA Conversion Contributions.

2. In the case of a.joint return, the AGI limits in the preceding paragraph apply to the combined AGI of the depositor and his or her spouse.

The 2012 AGI income limits have increased due to the cost of living adjustments to be:

	2002	2012
Single	$95,000-$110,000	$110,000-$125,000
Married Filing Jointly	$150,000-$160,000	$173,000-$183,000
Married Filing Separately	$0-$10,000	$0-$10,000

In summary, it has been 10.5 years since the IRS updated Form 5305-R and other IRA plan agreement forms. The IRS needs to issue a new version of the Roth IRA plan agreement forms as soon as possible. The 2002 version is in noncompliance with the law. One can only wonder why the IRS has concluded that the Roth IRA plan agreement forms do not need to updated.

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guidance on SEPs is not as substantial as one might expect.

When it comes to the topic of terminating a SEP, one wants to understand, is the employer ending its sponsorship of the SEP IRA plan, is the individual wishing to end his or her SEP-IRA and change it to be a standard traditional IRA or both?

For one person plans, the answer is generally both.

What is the difference between the SEP-IRA Plan and a SEP IRA?

The law mandates that there be a plan document executed when an employer sponsors any type of retirement or pension plan. This requirement exists for 401(k) plans, profit sharing plans, defined benefit pension plans and for SEP-IRA plans.

A SEP-IRA plan is generally completed when the employer completes and executes IRS model Form 5305-SEP. When there are employees in addition to owner, the employer must furnish a copy of the Form 5305-SEP to each eligible employee.

What is unique about the SEP-IRA plan is that the employer contributions are contributed to standard tra-

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The DOL's 401(k) Fee Disclosure Rules DO NOT Apply to SEP-IRA and SIMPLE-IRA Plans

Under existing Department of Labor (DOL) rules, the new 401(k) disclosure rules do not apply to SEP-IRAs and SIMPLE IRA plans. It does not matter whether there is only one participant or hundreds or thousands of participants in the SEP-IRA plan or SIMPLE IRA plan.

The DOL adopted by regulation two new fee disclosure requirements for certain employer sponsored retirement plans. In general, these plans must be "qualified" plans as defined in Code section 401(a). An employer who has adopted a SEP-IRA plan or a SIMPLE-IRA plan is not required to be furnished these fee disclosures. Many financial institutions may choose to furnish a more limited fee disclosure.

First, administrative service providers, including trust departments, had to provide to plan trustees of certain individual account plans certain fee disclosures so that the plan trustee could review these fees for reasonableness. The deadline was July 1, 2012. A service provider which has a service agreement with the plan or employer meets the disclosure requirement. Again, this fee disclosure requirement does NOT apply when the plan is a SEP-IRA plan or a SIMPLE-IRA plan.

Second, plan trustees and plan administrators of defined contribution plans (not defined benefit plans) that permit the participants to direct the investment of all or a portion of their account balance (i.e. self-direct) must have provided a new fee disclosure to plan participants by August 30, 2012. Again, this disclosure requirement does not apply to SEP-IRA plans and SIMPLE IRA plans.

The DOL's 401(k) Fee Disclosure Rules DO NOT Apply to One-Person Profit Sharing and/or One-Person 401(k) Plans

As discussed above for SEP-IRA and SIMPLE-IRA plans, the two new 401(k) disclosure rules do not apply to one person profit sharing and/or 401(k) plans.

That is, the bank as the service provider has no duty to furnish a fee disclosure to the plan sponsor.

And the financial performance disclosures are not required for one person plans. One presumes the mutual funds will be furnishing revised disclosures to one person plans also, requirements.

The DOL's 401(k) Fee Disclosure Rules DO NOT Apply When Plan Trustee Makes Investment Decisions

As discussed above for SEP-IRA and SIMPLE-IRA plans, the two new 401(k) disclosure rules do not apply to a profit sharing plan or a 401(k) plan when the participants do not have the right to make any investment decisions.

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ditional IRAs normally established by each employee by completing the Form 5035 or Form 5305-A. Note that an individual's SEP-IRA is part of the employer's SEP-IRA plan, but it is a distinct and a separate legal entity. By definition, a SEP-IRA is a traditional IRA to which the employer has made a SEP contribution.

What rules apply if a sponsoring employer wishes to terminate its SEP (SEP-IRA plan)?

The IRS acknowledges that an employer has the authority to terminate its SEP-IRA plan at any time. Since an employer has total discretion whether or not it will make a contribution, there is no requirement to make a contribution before the SEP IRA plan is terminated. And the employer has not duty to inform the participating employees that the plan has been terminated. The IRS does state that "it is a good idea" for the employer to so notify the employees. The IRS in its Retirement Plans FAQs regarding SEPs has written that "generally the IRS has not required SEPs to be amended for new law prior to termination."

What rules apply if a person with a SEP-IRA wishes now to have it be just a traditional IRA?

The individual needs to state this in writing by using an appropriate form or write a letter, email, etc. If this writing is furnished, then the IRA custodian may change

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IRA Statements – January and Others

An IRA custodian furnishes certain statements or disclosures to IRA accountholders and beneficiaries because the IRS require them. In other cases, the IRA custodian furnishes statements and notices for customer service reasons.

Recently an IRA custodian asked CWF to review three IRA statements as generated from its computer systems. One of them is set forth on the adjacent page.

An IRA statement used for customer service reasons can be written to cover any topic or subject the financial institution wishes to cover.

Under existing banking rules there is no requirement that an IRA custodian furnish an IRA statement to its IRA accountholders. It may be surprising, but there is no banking regulation requiring an IRA custodian to prepare any IRA statement, be it monthly or annually. Many financial institutions prepare an IRA statement for historical and customer service reasons.

However, current IRS reporting rules do mandate that an IRA custodian on an annual basis prepare and furnish two disclosures to an IRA accountholder. The discussion below is for the 2012 IRA year which runs from January 1, 2012, to April 15, 2013.

The IRS rules have changed over the period of 1975-2012.

Disclosure #1. By January 31, 2013, the IRA custodian must furnish a statement showing the fair market value of the IRA as of December 31, 2012. The three statements sent comply with this requirement.

If the IRA custodian wishes to use the special rule which allows it not to furnish a 2012 Form 5498 to those IRA accountholders who did not make any reportable contributions during 2012, then the statement of the FMV must contain text or a legend designating which information on the statement is being filed with the IRS (i.e. the FMV balance as of December 31, 2012). The three statements you sent do not have this special text. Consequently, the bank will have to furnish a 2012 Form 5498 to those accountholders who did not make a reportable 2012 contribution.

Disclosure #2. By May 31, 2013, the IRA custodian must prepare a 2012 Form 5498 for any accountholder or beneficiary who has a balance as of December 31, 2012. Secondly, a 2012 Form 5498 must be completed to report any contribution (but not a transfer) made to the individual's IRA, An IRA custodian is required to prepare and the furnish the 2012 Form 5498 by May 31, 2013, to both the IRA accountholder or beneficiary and the IRS. Note that Box 5 of the Form 5498 shows the account balance as of December 31, 2012.

An IRA custodian may comply with the IRS rules in a number of ways. Each custodian will need to decide which of the following three approaches it will use.

Approach #1. Furnish the 2012 Form 5498 to all IRA accountholders by January 31, 2013. This form will report all contributions made during 2012 for 2012. Since the fair market value is reported in Box 5 there is no need for the IRA custodian to prepare a separate fair market value statement. If the IRA accountholder makes a contribution for 2012 from January 1, 2013 to April 15, 2013, then a corrected Form 5498 will need to be furnished to such an IRA accountholder by May 31, 2013. A substitute Form 5498 also may be furnished rather than the actual IRS Form 5498. In general, the substitute Form 5498 must set forth all of the text set forth on the IRS Form 5498 as written for the IRA accountholder.

Approach #1 is an exception to the general IRS rule that two disclosures are required - one in January and one in May of 2013. Under approach #1 only the 2012 Form 5498 is furnished. For those accountholders who make carryback contributions in 2013 for 2012, they will be furnished two 5498 forms, one in January and one in May. Otherwise only the one 2012 Form will be furnished to the accountholder or beneficiary by January 31, 2013.

Approach #2. The IRA custodian will be prepare the two forms or disclosures for 2012 in 2013. Each IRA accountholder who had a balance as of December 31 will be furnished with a statement called the FMV statement showing the balance as of December 31, 2012. And then the IRA custodian must furnish to those accountholders who made a reportable contribution for 2012, a 2012 Form 5498 by May 31, 2013. Note that the IRA custodian is not required to furnish the IRA accountholder with a 2012 Form 5498 if he or she had not made a reportable contribution and the IRA custo-

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dian in January had furnished a complying FMV statement with the added text or legend that the FMV balance as of December 31, 2012 will be furnished to the IRS when the 5498 form is filed with the IRS.

Approach #3. The same as Approach #2 except the IRA custodian chooses to furnish a 2012 Form 5498 to all IRA accountholders in May 2013 even though this is not required. For customer service reasons, many IRA custodians still choose to furnish an annual "recap" statement as the three you sent CWF to review. That is, the statement shows the beginning balance, adds contributions, adds interest, subtracts distributions and shows the ending balance. Often these statements do not set forth an explanation to the recipient that his or her fair market value as of December 31, 2012 will be furnished to the IRS when the Form 5498 is filed.

Many years ago the IRS required an IRA custodian to furnish an IRA statement by January 31 of the following year listing each transaction which occurred during the calendar year. This requirement still exists for SIMPLE IRAs. The IRS has modified this requirement a number of times. First, it was modified by allowing an IRA custodian to furnish a summary of the contributions, distributions, and paying of interest with the ending balance. The next change was to allow the use of Approach #1 or Approach #2.

An IRA custodian must prepare a January statement and a Form 5498 for an inheriting beneficiary who has a balance as of December 31, 2012. The same is true for an IRA accountholder who dies in 2012, but there is a special rule for the reporting of the fair market value of the decedent's IRA. See the discussion in the IRS instructions.

IRA Statement:

January 05, 2013

Re: Statement of IRA Activity

Dear

This statement is a summary of your individual retirement account activity for 2012.

Value at the beginning of the year	$89,652.42
Capitalized earnings for the Current Tax Year	493.86
IRA Fee	30.00
End of the year fair market value	$90,089.28
Current accrued interest	$73.64

If you have made changes in your designation of beneficiaries during the current year, please notify us at your earliest convenience. Also, if you have any questions about your statement or need additional information, do not hesitate to call us.

Thank you for allowing us to be part of your investment plans.

Sincerely yours,

SEP-IRAs,
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the IRA type code on its computer system from being "SEP" to being an "IRA." Remember, there are four types of IRAs for Form 5498 (box 7) purposes - IRA, SEP, SIMPLE and Roth. CWF's IRA transfer Form 56 does cover the topic of transferring SEP-IRA funds to or from a traditional IRA.

An individual may wish to consult with his or her legal or tax advisor before deciding to have SEP-IRA funds just become standard traditional IRA funds. Under federal Bankruptcy law an individual is allowed to exempt up to $1,000,000 in traditional and Roth IRAs AND also exempt the amount in his or her SEP-IRAs and SIMPLE IRAs. Thus, adding SEP funds to a traditional IRA could harm those individuals who have more than $1,000,000 in their traditional and Roth IRAs.

Under creditor/debtor law, federal law seems to support the argument that a general creditor (other than the IRS) cannot reach assets within a SEP-IRA where the employer had multiple participants. In some states, it is possible for a creditor to reach IRA assets. Assets within a SEP-IRA have greater protection from creditors than assets within a traditional IRA.

What procedures should be used by a financial institution if it wants to have those SEP accountholders with nonactive SEP IRAs switch them to be traditional IRAs?

As discussed above, a written instruction should be received that the SEP-IRA funds are to be internally transferred into a traditional IRA.

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CESAs – Moving Funds Between Family Members

Some individuals are returning to college this Fall and some are not. There are times when a CESA has been established for a son or daughter or grandchild and that individual has decided that he or she does not wish to continue his or her higher education. A Coverdell ESA (CESA) is an individual account just as an IRA is an individual. The CESA benefits one person.

In order for a distribution from a CESA to be non-taxable, it must be used to pay for a qualified education expense of the designated beneficiary at an eligible educational institution. Note the funds cannot by withdrawn by the designated beneficiary on a tax-free basis from his or her CESA and then he or she uses the funds to pay for an education expense of a brother or sister, spouse, child, etc.

If a designated beneficiary withdraws funds from his or her CESA and does not use the proceeds to pay for his or her education expenses, the general tax rule is - he or she would need to include any "earnings" in his or her income and would also owe a 10% additional tax.

However, the funds in one person's CESA may be moved via transfer or rollover into a second person's CESA as long as the second person is a member of the first person's family. And the subsequent use of these funds by the new CESA designated beneficiary to pay his or her education expenses will be non-taxable.

What approaches or procedures may be used to move the CESA funds from the first individual to another family member?

Approach #1. The responsible individual may change the designated beneficiary of the CESA from one person to another family member.

Approach #2. The responsible individual may transfer the funds from individual's CESA to another family member's CESA.

Approach #3. The responsible individual may take a distribution from an individual's CESA and make a rollover contribution to another family member's CESA.

The CESA's responsible individual may or may not have the authority to change the designated beneficiary. This will need to be determined. The responsible individual is generally a parent of the designated beneficiary, but it may be a grandparent in some situations. And

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TRUSTEE'S or ISSUER'S name, street address, city, state, and ZIP code	1 Coverdell ESA contributions $ 2 Rollover contributions $	OMB No. 1545-1815 **2012** Form **5498-ESA**	**Coverdell ESA Contribution Information**
TRUSTEE'S/ISSUER'S federal identification no. / BENEFICIARY'S social security number			**Copy A For Internal Revenue Service Center** **File with Form 1096.**
BENEFICIARY'S name			
Street address (including apt. no.)			For Privacy Act and Paperwork Reduction Act Notice, see the **2012 General Instructions for Certain Information Returns.**
City, state, and ZIP code			
Account number (see instructions)			

Form **5498-ESA** Cat. No. 34011J Department of the Treasury - Internal Revenue Service

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the designated beneficiary many times becomes the responsible individual at attaining the age of majority.

Article V of Form 5305-EA (Coverdell Education Savings Custodial Account) and Form 5305-E (Coverdell Education Savings Trust Account) provides that at the time the designated beneficiary attains the age of majority under state law that he or she becomes the responsible individual of his or her CESA unless the form has been completed authorizing that the responsible individual is to remain as the responsible individual.

Article VI provides that the responsible individual may be given the authority by checking a box allowing the responsible individual to change the designated beneficiary to another family member.

Set forth is a typical situation where the family may wish to move funds from one person's CESA to another family member's CESA. A parent established three Coverdell ESA accounts for her three children, two daughters and a son. She retained the right to remain as the responsible individual even when a child attained the age of majority. One of her children with $9,500 in her CESA has decided to not attend college until 2015. Her other sister could use the $9500 to pay towards her Fall 2012 college expenses.

Moving the funds from one person's CESA to a different family member's CESA can be achieved in a number of ways.

It is possible to change the CESA's designated beneficiary to one of the other siblings. CWF has a form to accomplish this task. It appears the IRS allows the changing of the designated beneficiary by allowing the responsible to instruct the CESA custodian to change the account's name. The IRS instructions to the CESA custodian indicate that the custodian is not to file Form 1099-Q for a change in the name of the designated beneficiary as long as the new beneficiary is a member of his or her family and be under age 30, but this age condition does not apply if the new beneficiary has special needs.

CESA funds may also,be moved by rollover or transfer.

A rollover means the funds are distributed to the responsible individual. He or she may redeposit such funds into the designated beneficiary's CESA at another financial institution. Or, the responsible individual may make a rollover contribution into a CESA established for a family member of the designated beneficiary.

Moving the funds from one person's CESA to another family member's CESA can also be done as a transfer.

Unlike with IRA transfers, CESA transfers are reportable under IRS reporting rules. The fact that a CESA transfer is reportable does not mean it is taxable. It is not.

The CESA custodian making the distribution/transfer is to complete box 4 by checking the box if there was a distribution directly from one CESA to another CESA or to a QTP ,

The CESA custodian accepting the rollover/transfer is to complete box 2 (Rollover Contributions) by entering the rollover or transfer amount in box 2. Any amount distributed from a CESA may be rolled over (or transferred) to another CESA and it is not taxable if it is for the benefit of the same designated beneficiary or a member of the beneficiary's family.

The following are family members of the designated beneficiary:

1. His or her spouse;
2. His or her children, stepchildren, foster children and their decedents;
3. His or her siblings and their children;
4. His or her parents, their siblings and ancestors;
5. His or her stepparents;
6. His or her in-laws;
7. The spouse of any person in 2-6; and
8. His or her first cousin.

In summary, the law defines quite broadly those individuals who qualify as a family member of the designated beneficiary. This allows the CESA funds to be transferred tax-free between family members.