THE Pension Digest

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ALSO IN THIS ISSUE –

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

The Spousal IRA is now the Kay Bailey Hutchison Spousal IRA

On July 25, 2013, President Obama signed into law a tax bill wherein the heading of Code section 219(c) was retitled. The actual text of Code section 219(c) was not changed.

In order to honor the former Texas senator, Kay Bailey Hutchison, the heading of "Special Rules for Certain Married Individuals" was changed to read, "Kay Bailey Hutchison Spousal IRA." Congress can act on a bi-partisan basis when it wants to. Senator Hutchison was a 3.3 term (20 years) Republican senator.

Can't Directly or Indirectly Rollover a Roth IRA to a 401(k) Plan

401(k) participants sometimes wonder if they can and should move their Roth IRA funds into their 401(k) plan. Current tax law does not authorize a person to move their Roth IRA funds into their employer's 401(k) even if the 401(k) plan authorizes Designated Roth contributions. The 401(k) plan does not authorize such a rollover because current law does not authorize this movement as being nontaxable.

Maybe the law will permit this someday, but not at the present time.

There will be a tax mess both for the 401(k) plan and the individual if such a

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Must be at Least 70$^1/_2$ for QCDs

An IRA accountholder or an IRA beneficiary is eligible to make a qualified charitable distribution (QCD) for 2013 only if he or she is age 70$^1/_2$ or older as of the distribution. Turning age 70$^1/_2$ later in 2013 is insufficient.

The IRA custodian/trustee must prepare the check with the qualified charity named as the payee. An in-kind distribution to a charity does not qualify.

The instructions for the Form 1099-R indicate that there is no special reporting for a QCD. The IRA custodian/trustee prepares the Form 1099-R in the standard fashion; boxes 1 and 2a showing the gross distribution amount with the taxable amount not determined box (box 2b) being checked and it will be up to the individual to complete his or her tax return to show why the distribution is not taxable.

The individual will need to complete lines 15a and 15b on Form 1040 as follows. Enter the total distribution on line 15a. If the total amount distributed is a QCD, enter -0- on line 15b. If only part of the distribution is a QCD, enter the part that is not a QCD on line 15b unless Exception 2 applies to that part. Enter "QCD" next to line 15b.

A QCD is a distribution made directly by the trustee of a person's IRA (other than an on going SEP or SIMPLE-IRA) to an organization eligible to receive tax-deductible contributions (with certain

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Special Considerations – Deceased IRA Owner (56) and Beneficiary (89)

It happens, an individual will die in his or her 50's and she will have designated her mother who is in her 80's as her IRA beneficiary. A beneficiary in her late 80's has special considerations in deciding how to structure the RMDs which must be withdrawn.

An inheriting IRA beneficiary should always be informed to see her tax advisor before deciding how and when to withdraw funds from an inherited traditional IRA.

Illustration. Yolanda is age 89 and she is the beneficiary of her daughter's (IRA). Maria died in August of 2013 at the age of 56.

Maria died well before her required beginning date. There is no RMD due for 2013. Yolanda will be required to commence withdrawing her beneficiary RMDs by December 31, 2014, and each subsequent year unless she elects to use the 5-year rule by the same date. There is a good chance she would elect to use the 5-year rule. Why?

Under the 5-year rule, Yolanda may, but she is not required to take any distribution during 2013-2017. Yolanda might like taking no distributions for a number of years (no taxes to be paid) and this is certainly attractive if her beneficiaries will be subject to a lower marginal income tax rate than her. Yolanda may die during 2013-2017. Yolanda (or her inheriting beneficiary) will be required to close out the inherited IRA by December 13, 2018.

The other option for Yolanda is to use the life distribution rule. If Maria had died at age 72 rather than age 56 (after her required beginning date), then the payout period applying to Yolanda would start with 14.5 (the longer of: the life expectancy of the beneficiary (Yolanda) or the remaining life expectancy of the IRA owner (Maria) determined as of the year of Maria's death). However, since Maria died before her required beginning date, the payout period will start with 5.5. Yolanda's life expectancy is determined in 2014 since that is the year after Maria died. She must take an RMD of approximately 20% each year.

Under the pre-2002 RMD rules, any "older" beneficiary was permitted to take RMDs over the remaining life expectancy of the younger IRA accountholder. In 2002 when the IRS rewrote the RMD regulation it took away using the remaining live expectancy of the deceased IRA owner if he or she died before his or her required beginning date. Maria died before her required beginning date.

If an IRA had a sufficiently large IRA balance, the right inheriting IRA beneficiary might find it worth while to contest the change made by the IRS via regulation. One could argue that the regulation is contrary to the statute. For example, Yolanda (or her beneficiary) would argue that the payout period should be 14.5 years and not 5.5. years. Tax differences could be substantial.

QCDs,
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exceptions). A person must have been at least age 70½ when the distribution was made. A person's total QCDs for the year cannot be more than $100,000. (On a joint return, the person's spouse can also have a QCD of up to $100,000.) The amount of the QCD is limited to the amount that would otherwise be included in income. If a person's IRA includes nondeductible contributions, the distribution is first considered to be paid out of otherwise taxable income. See Pub. 590 for details.

A person cannot claim a charitable contribution deduction for any QCD not included in income.

In addition, the IRS provides the individual with the following 2013 QCD reporting reminders.

- Don't deduct as a charitable contribution any amount of a QCD you exclude from your gross income.
- Report your 2013 QCDs on your 2013 Form 1040.
- File a 2013 Form 8606. *Nondeductible IRAs* (instructions) with your return if your 2013 QCD was from a:
  - Roth IRA; or
  - a traditional IRA, in which you had basis, and you received a 2013 distribution from any traditional IRA other than the 2013 QCD.

HSAs and Preventive Care Provisions for HDHPs

The IRS has recently issued additional guidance on the subject of preventive care benefits and HSAs.

The basic statutory HSA rule is that a HDHP may not provide benefits (i.e. pay an insurance claim) until the individual has satisfied plan's minimum deductible. For 2013 and 2014, the minimum annual deductible for a single HDHP is $1,250, the minimum annual deductible for a family HDHP is $2,500. The deductible limit for an HDHP may be set higher than the minimum deductible amount as long as the maximum out of pocket limit is not exceeded. For example, the single HDHP covering Jane Doe could have a deductible limit of $2,000 and not the minimum amount of $1,250. Jane must pay the first $2,000 of medical expenses. Most likely the $2,000 to pay these medical expenses would come from her HSA. If she would not have this amount in her HSA, she would use personal funds.

There is a major statutory exception. A HDHP may pay off claims related to preventive care regardless of the plan's minimum annual deductible. Normally, the purchaser of the HDHP will be required to pay an additional amount to gain the preventive care benefits.

The health insurance laws were changed by the Patient Protection and Affordable Care Act as enacted on March 23, 2010. One of the changes is, section 2713(a)(4) of the PHS Act (Public Health Service Act) requires that health insurers offering group or individual health insurance coverage must now provide benefits for certain women's preventive health service without any cost sharing.

The new law requires all health plans, including HDHPs for HSAs, to cover with no additional premium all FDA approved contraceptive methods, sterilization procedures, and patient education and counseling for women with reproductive capacity, as prescribed by a health care provider.

How does this rule impact HDHPs and HSAs? Does it mean there no longer can be HSAs since the health plan must pay the expense even though the individual has not satisfied the deductible requirement?

The IRS has concluded that an individual remains HSA eligible even though the health plan must pay for the special services before the annual deductible requirement has been met. The reason is, such expenses qualify as preventive care benefits.

In Notice 2013-57 the IRS restates that the previously issued guidance regarding preventive care for HSA purposes as set forth in Notice 2004-50 and Notice 2004-23 continues to apply and that any preventive services under section 2713 of the PHS also are preventive services for HSA purposes.

IRS Guidance on Preventive Care in Notice 2004-50 (Q&A 26 & 27)

Q-26. Does a preventive care service or screening that also includes the treatment of a related condition during that procedure come within the safe harbor for preventive care in Notice 2004-23?

A-26. Yes. Although Notice 2004-23 states that preventive care generally does not include any service or benefit intended to treat an existing illness, injury, or condition, in situations where it would be unreasonable or impracticable to perform another procedure to treat the condition, any treatment that is incidental or ancillary to a preventive care service or screening as described in Notice 2004-23 also falls within the safe-harbor for preventive care. For example, removal of polyps during a diagnostic colonoscopy is preventive care that can be provided before the deductible in an HDHP has been satisfied.

Q-27. To what extent do drugs or medications come within the safe-harbor for preventive care services under section 223(c)(2)(C)?

A-27. Notice 2004-23 sets out a preventive care deductible safe harbor for HDHPs under section 223(c)(2)(C). Solely for this purpose, drugs or medications are preventive care when taken by a person who has developed risk factors for a disease that has not yet manifested itself or not yet become clinically apparent (i.e., asymptomatic), or to prevent the reoccurrence of a disease from which a person has recovered. For example, the treatment of high cholesterol with cholesterol-lowering medications (e.g., statins) to prevent heart disease or the treatment of recovered heart attack or stroke victims with Angiotensin-converting Enzyme

IRS Guidance,
Continued from page 3

(ACE) inhibitors to prevent a reoccurrence, constitute preventive care. In addition, drugs or medications used as part of procedures providing preventive care services specified in Notice 2004-23, including obesity weight-loss and tobacco cessation programs, are also preventive care. However, the preventive care safe harbor under section 223(c)(2)(C) does not include any service or benefit intended to treat an existing illness, injury, or condition, including drugs or medications used to treat an existing illness, injury or condition.

IRS Guidance on Preventive Care in Notice 2004-23

Preventive care for purposes of section 223(c)(2)(C) includes, but is not limited to, the following:

- Periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals.
- Routine prenatal and well-child care.
- Child and adult immunizations
- Tobacco cessation programs
- Obesity weight-loss programs
- Screening services (Appendix)

However, preventive care does not generally include any service or benefit intended to treat an existing illness, injury or condition.

Internal Revenue Bulletin – April 12, 2004 – Notice 2004-23

Notice 2004-23, APPENDIX
Safe Harbor Preventive Care Screening Services
Cancer Screening
Breast Cancer (e.g., Mammogram)
Cervical Cancer (e.g., Pap Smear)
Colorectal Cancer
Prostate Cancer (e.g., PSA Test)
Skin Cancer
Oral Cancer
Ovarian Cancer
Testicular Cancer
Thyroid Cancer
Heart and Vascular Diseases Screening
Abdominal Aortic Aneurysm
Carotid Artery Stenosis
Coronary Heart Disease
Hemoglobinopathies
Hypertension
Lipid Disorders
Infectious Diseases Screening
Bacteriuria
Chlamydial Infection
Gonorrhea
Hepatitis B Virus Infection
Hepatitis C
Human Immunodeficiency Virus (HIV) Infection
Syphilis
Tuberculosis Infection
Mental Health Conditions and Substance Abuse Screening
Dementia
Depression
Drug Abuse
Problem Drinking
Suicide Risk
Family Violence
Metabolic, Nutritional, and Endocrine Conditions Screening
Anemia, Iron Deficiency
Dental and Periodontal Disease
Diabetes Mellitus
Obesity in Adults
Thyroid Disease
Musculoskeletal Disorders Screening
Osteoporosis
Obstetric and Gynecologic Conditions Screening
Bacterial Vaginosis in Pregnancy
Gestational Diabetes Mellitus
Home Uterine Activity Monitoring
Neural Tube Defects
Preeclampsia
Rh Incompatibility
Rubella
Ultrasonography in Pregnancy
Safe Harbor Preventive Care Screening Services — Continued
Pediatric Conditions Screening
Child Developmental Delay
Congenital Hypothyroidism
Lead Levels in Childhood and Pregnancy
Phenylketonuria
Scoliosis, Adolescent Idiopathic
Vision and Hearing Disorders Screening
Glaucoma
Hearing Impairment in Older Adults
Newborn Hearing

Rollover,
Continued from page 1

rollover is made. Most likely the IRS would NOT allow the Roth IRA funds to be returned to the Roth IRA if the 60-day period to complete a rollover has expired. The person might try to argue that he or she received poor advice from an advisor, but there is going to come a time when the IRS will not so readily accept this argument. The IRS will make the argument – you withdrew the funds from your Roth IRA and you did not complete a timely rollover; your funds are no longer entitled to be returned to the Roth IRA. Such a distribution may or may not have any current income tax consequences. What is known, such funds will not earn tax-free income as would have been the case had they stayed in the Roth IRA.

Basic Beneficiary RMD Rules

Rules for The Year the IRA Owner Dies.

1. Before 70½ Year. There is no RMD required for the year of death if an IRA accountholder dies in a year when he or she has not or would not have attained age 70½. This is true for all beneficiaries – spouses and nonspouses. The IRA accountholder has died before his or her required beginning date
2. During 70½ Year. There is one rule for a spouse beneficiary and a different rule for a nonspouse beneficiary. For a nonspouse beneficiary the rule set forth in #1 above applies. For a spouse beneficiary a special rule applies. There is an RMD required for the year of death if an IRA accountholder either attained age 70½ during such year or would have attained age 70½ during such year since an RMD is determined because it is assumed the IRA accountholder lived throughout the year.

   The RMD must be distributed to the spouse beneficiary to the extent it was not distributed to the IRA accountholder prior to his or her death.

   CWF Comment. A literal reading of the statutory law is that there is no RMD due when an IRA accountholder dies before his or her required beginning date. The effect of the regulation is to create for a married accountholder an RMD for the 70½ year even when the accountholder dies before his or her required beginning date.
3. After 70½ Year. There is an RMD required for the year of death if an IRA accountholder dies in any year after the year he or she attained age 70½. Again, it is assumed that he or she lived through out the year. Thus, the RMD amount as calculated for the deceased accountholder using the Uniform Lifetime Table (or Joint Table,if applicable) is the RMD for such year. If this RMD amount is not distributed to the IRA accountholder prior to his or her death, then the remaining RMD must be paid to the beneficiary by December 31 of the year the accountholder died or the 50% tax is owed unless the IRS would waive it.

Additional Discussion

If the IRA accountholder died before his or her required beginning date, then the IRA plan agreement provides that the required distributions for the year after the year of the death will be determined using the life distribution rule by using the initial life expectancy of the nonspouse beneficiary. The one year reduction rule will be used for subsequent years.

Exception – the beneficiary may elect to use the 5-year rule rather than the life distribution rule. Such election must be made by the beneficiary by December 31 of the year following the year the accountholder died.

If a beneficiary under the life distribution rule misses some RMDs, the IRS has the authority to consent to a beneficiary's request to switch to the 5-year rule.

If the IRA accountholder died on or after his or her required beginning date, then the IRA plan agreement provides that the required distributions for the year after the year of the death will be determined by using the life distribution rule and by using the initial life expectancy of the nonspouse beneficiary. The one year reduction rule will be used for subsequent years. The 5- year rule does not apply when the IRA accountholder dies on or after his or her required beginning date

There are three exceptions to the rule that the life expectancy to be used as the divisor in the RMD calculation for years after the year of death is the life expectancy of the designated beneficiary. Exception #1 is when the designated beneficiary is older than the deceased IRA accountholder. Exception #2 is when there is no designated beneficiary so the estate becomes the beneficiary. Exception #3 is when the surviving spouse is the sole beneficiary of his or her deceased spouse who had not yet attained age 70½.

In the cases of both Exception #1 and #2, the distribution period applying will be based on the single life expectancy of the deceased IRA accountholder as determined in the year of his or her death, but reduced by one for each elapsed year to determine the divisor for subsequent years. In case of Exception #3, the surviving spouse must commence distribution by December 31 of the year the deceased IRA accountholder would have attained age 70½.

The purpose of this article has been to present the basic RMD rules for beneficiaries. All exceptions have not been discussed.

When Taking a Larger IRA Distribution is a Good Idea

And we mean more income, with no increase in taxes! Once an IRA accountholder attains age 70½, he or she is required to withdraw at least the required minimum. As illustrated below, some individuals should withdraw more because they will owe no income tax on such withdrawal. Sometimes an IRA accountholder is so concerned with only withdrawing the required minimum that he or she fails to take advantage of a planning technique to lower the amount of income tax to be paid. Why have the kids (or another beneficiary) pay income tax if the tax laws do not require it?

Example 1: Phyllis, age 75 and single, has a 2013 RMD in the amount of amount of $6,800. The minimum income requirement for filing a 2013 federal return is $11,200 for someone over the age of 64, whose filing status is single.

Consequently, Phyllis could take an additional IRA distribution in the amount of $1,399 ($11,449 - $9,800) and still not be required to file a federal tax return or pay any taxes. She has taken an extra $1,399 TAX FREE!

Example 2: George and Harriet are married and both are over age 70½. Their RMDs for 2013 are $2,000 for George and $2,500 for Harriet. They have total income in 2013 of $18,000. They file their federal tax return jointly, but are not required to file, because their joint income is less than $21,800.

In this example, George and Harriet can take additional IRA distributions in the amount of $3,399 ($21,799 - $18,000) and still not be required to file a federal tax return. That means they could take an additional $3,799 TAX FREE.

In both cases, it would have been possible for the IRA accountholders to take additional IRA distributions without requiring the filing of a federal tax return and without increasing their tax liability. Tax-free income is something everyone can relate to. The IRA accountholder should always review his/her particular circumstances with his/her own tax advisor. There may also be state income tax consequences and filing requirements to be considered.

The IRS and IRAs

The IRS does not administer IRAs as well as it once did. Other people are noticing. Other regulators such as the DOL, CFPB, and SEC are wondering what might or should their roles be with respect to IRAs. The IRS last updated their model IRA forms for traditional and Roth IRAs in March of 2002, the SEP forms in December of 2004 and two of the "employer" SIMPLE forms in March of 2012. The two "employee" SIMPLE forms were also last updated in March of 2002. CWF is not sure why the IRS has chosen to not update these forms to incorporate law changes since 2002.

Set forth is a page from the February 2013 Employee Plans newsletter. A summary chart compares Traditional and Roth IRAs. There is an error. Can you find it? See page 8 for an explanation of the error.

We would suggest to the IRS that it add a box to the chart to discuss the rules applying to an inheriting non-spouse beneficiary. In 2002 when an IRA accountholder died many times his or her beneficiary was a spouse. Now in 2013 it is common that the inheriting beneficiary is a child or possibly even a child of the inheriting child. From time to time the IRS has confrontations with some members of Congress. In 2002 the IRS chose to limit their guidance to beneficiaries because certain Congressional leaders had told the IRS its power to collect/report RMD information on the From 5498 was limited. This limit is still recognized by the IRS today since the IRA custodian completes box 11 to indicate whether an IRA accountholder is subject to the RMD rules, but the IRS does not require to be furnished the actual RMD amount. And box 11 is not checked for an inheriting IRA beneficiary. There will be beneficiaries who will owe the 50% missed RMD tax because they fail to take their RMD.

The IRS chart also does not do a good job of summarizing or explaining how and when distributions from traditional IRAs are taxed or distributions from Roth IRAs are taxed. The IRS should change this discussion.

THE Pension Digest

IRS Employee Plans News

Traditional and Roth IRAs

Traditional and Roth IRAs allow you to save money for retirement. This chart highlights some of their similarities and differences.

Features	Traditional IRA	Roth IRA
Who can contribute?	You can contribute if you (or your spouse if filing jointly) have taxable compensation but not after you are age 70½ or older.	You can contribute at any age if you (or your spouse if filing jointly) have taxable compensation and your modified adjusted gross income is below certain amounts (see 2012 and 2013 limits).
Are my contributions deductible?	You can deduct your contributions if you qualify.	Your contributions aren't deductible.
How much can I contribute?	The most you can contribute to **all** of your traditional and Roth IRAs is the smaller of: • for 2012, $5,000, or $6,000 if you're age 50 or older by the end of the year ($5,500 or $6,500 for 2013); or • your taxable compensation for the year.	
What is the deadline to make contributions?	Your tax return filing deadline (not including extensions). For example, you have until April 15, 2013, to make your 2012 contribution.	
When can I withdraw money?	You can withdraw money anytime.	
Do I have to take required minimum distributions?	You must start taking distributions by April 1 following the year in which you turn age 70½ and by December 31 of later years.	Not required if you are the original owner.
Are my withdrawals and distributions taxable?	Any deductible contributions and earnings you withdraw or that are distributed from your traditional IRA are taxable. Also, if you are under age 59 ½ you may have to pay an additional 10% tax for early withdrawals unless you qualify for an exception.	None if it's a qualified distribution (or a withdrawal that is a qualified distribution). Otherwise, part of the distribution or withdrawal may be taxable. If you are under age 59 ½, you may also have to pay an additional 10% tax for early withdrawals unless you qualify for an exception.

Additional Resources:

- Publication 590, *Individual Retirement Arrangements (IRAs)*
- Individual Retirement Arrangements Web pages
- Required Minimum Distributions Web pages
- FAQs: Traditional and Roth IRAs

The IRA/401(k) Tax Credit

Many individuals participate in a 401(k) plan and make contributions to the 401(k) plan. Not as many make IRA contributions. Individuals should consider making both types of contributions. Some individuals will qualify for a tax credit when they make 401(k) and/or IRA contributions.

Names for this credit are the Retirement Contributions Credit or the Saver's Credit.

Federal income tax law has authorized certain individuals to claim a credit on their tax return. Assume Jane is single and her income will be $28,000. By making an IRA contribution (or a 401(k) contribution) of $2,000 she will qualify for a tax credit of $200. This will reduce any tax liability she has.

This credit does not allow a person to receive a tax refund. This credit, however, may allow a person to reduce his/her tax liability to zero.

A formula is used to calculate the credit. Allowed credit = contribution (no more than $2,000) x applicable percentage. The credit may vary from $1 to $1,000, depending on the amount the person contributes to the IRA, his or her filing status and his or her modified adjusted gross income. See the following chart.

A person qualifies for the credit if the following requirements for a given year are satisfied –

1. Makes a contribution to a traditional and/or Roth IRA or an elective deferral contribution to a 401(k), 403(b) or 457 plan.
2. Be at least 18 years of age as of December 31 of such year
3. Not a dependent on someone else's tax return
4. Not a student as defined in Internal Revenue Code section 25B(c)
5. Have adjusted gross income under certain limits, which are based on your filing status:

	2013
Joint Filers	$59,000.01
Head of Household	$44,250.01
All Other Filers	$29,500.01

6. Must not have received certain distributions which disqualify the person from claiming the credit, or certain distributions which were made to his or her spouse. Because of the complexity of this credit, a person will want to review IRS Publication 590 for a complete explanation.

Saver's Credit Percentage Chart for 2013

Joint Return Over	Joint Return Not Over	Head of Household Over	Head of Household Not Over	All Others Over	All Others Not Over	Credit %
$0	$35,500	$0	$26,625	$0	$17,750	50%
$35,500	$38,500	$26,625	$28,875	$17,750	$19,250	20%
$38,500	$59,000	$28,875	$44,250	$19,250	$29,500	10%
$59,000		$44,250		$29,500		0%

IRS Employee Plans News Chart Mistake

A person is eligible to contribute to a traditional IRA as long as he or she has taxable compensation during the year and he or she does not attain age 70½ by December 31. The chart is incorrect since it states a person is ineligible to make a contribution to a traditional IRA once the person is age 70½ or older. It is permissible for some individuals who are age 70½ to still make a traditional IRA contribution. Example, Jane Doe will attain age 70½ on March 3, 2014. She has compensation during 2013. Jane is eligible to make an IRA contribution for 2013 on April 15, 2014, even though she is age 70½. We all mistakes.