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IRS Postpones New Rollover Rule To January 1, 2015

The IRS has announced it will follow the Tax Court's interpretation of the one per year rollover rule as set forth in A.L. Bobrow and E.S. Bobrow v. Commissioner of Internal Revenue, T.C. Memo 2014-21.

The new rule is that a person is allowed to only rollover one distribution from an IRA within a 12-month period. A person who exceeds this limit will have adverse tax consequences as the second or later distribution would be taxable and would constitute an excess contribution if it was re-contributed to another IRA.

In 1981 the IRS adopted a proposed regulation which set forth the rule that the one per year rollover limitation applies on a per IRA plan agreement basis. Thus, person with three IRAs at three different IRA custodians was permitted to take a distribution from each and then roll each distribution over within a twelve month period.

In order to give IRA accountholders and IRA custodians time to make administrative changes, the IRS has delayed implementation of the new rule until January 1, 2015. IRA custodians and trustees will need to modify rollover certification forms and IRA plan agreement forms and to inform IRA accountholders of the new rule.

The delay of the deadline means a person who has multiple IRA plan agreements may be able to take a distribution from a separate IRA prior to January 1, 2015, and rollover such distribution as long as the person complies with the rules as presently set forth in the 2013 IRS Publication 590 (Individual Retirement Arrangements).

This new rollover rule does not limit or change in any way the number of permissible IRA transfers.

And the one year rollover rule only applies to IRA distributions, this rule has never applied to distributions from 401(k) and other employer sponsored retirement plans.

It is possible the IRS may extend the deadline to a date in 2015 later than January 1, 2015, but one should not count on this.

If the IRS does Not extend this deadline, an IRA custodian will want to inform its existing IRA accountholder of the new rollover rule and that it applies to distributions occurring on or after January 1, 2015. Some institutions may find it cost effective to inform IRA accountholders of this new rule in May via an amendment or a brochure when it furnishes the 2013 Form 5498.

ALSO IN THIS ISSUE –

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

Substitute IRS Statements to Recipients for IRAs, HSAs and CESAs

A financial institution is required to furnish a recipient a tax statement with certain information. The statement can be a copy of the official IRS form or an "acceptable substitute."

Different rules apply to different forms. There are certain content and format rules for Forms 1009-B, 1099-INT, 1099- DIV, 1099-OID, and 1099-PATR.

There are other rules for Forms 5498, 5498-ESA, 5498-SA, 1099- R, 1099-SA and 1099-Q and many other forms. See section 4.1.3 of Publication 1179 for a listing of these other forms.

To be acceptable for the IRA, HSA and CESA forms, a substitute form recipient statement must meet the following requirements.

1. The tax year (e.g. 2013), form number (e.g. 5498), and form name must be the same as the official form and must be displayed prominently together in one area of the statement.
2. The statement must contain the same information as the official IRS form - name, address, and TIN of the filer, the name, address, and TIN of the recipient, and all other information required by the official form.

   The general rule is - do not include on the substitute statement any information which is not on the official IRS form.

   In some cases it is permissible to include supplemental tax information, but such information must assist the recipient with completing his or tax return. There must be a provision informing the recipient that the supplemental information is not furnished to the IRS.
3. A filer of forms 5498, 1099-R, 5498-SA, 1099-SA, or 5498- ESA, is encouraged to furnish a telephone number at which a recipient may reach a person who will be able to answer his/her questions. A filer of Form 1099-Q (CESA distribution) must set forth on the substitute statement the direct access telephone number of an individual who can answer questions about the substitute statement.
4. The boxes on the substitute statement setting forth money amounts and other information must be titled in substantially the same manner as on the official IRS form. This rule also applies to the box numbers.

   There are three special rules Form 1099-R. First, the box caption "Federal income tax withheld" must be in boldface type on the form recipient statement. Second, if income tax has been withheld, then the the recipient must be furnished at least two copies (Copy B and Copy C) of the substitute Form 1099-R. Third, whether or not income tax has been withheld, the recipient must be furnished , instructions very similar to (or the exact instructions) as set forth on Copy B and C of the official IRS form.
5. The filer must provide the recipient of the substitute statement instructions similar (or the same) to those on the IRS official form so that the recipient will be aided in using such information to prepare his or her tax return. This is the rule which many substitute statements do not satisfy.

   CWF suggests include the IRS text from the official form and then in some cases add a supplemental discussion. Just be sure the additional discussion is correct and makes it easier for the individual to properly report the IRA, HSA or CESA tax transaction. Trying to simplify what the IRS has said on the official form is risky as the IRS may not agree with your efforts to improve what the IRS wrote.
6. A filer is able to use carbonless forms to comply with the rules requiring the recipient with various tax statements. However, there are quality requirements. All copies must be clearly legible. All copies must be able to be photocopies. Many IRA custodians, HSA custodians, and CESA custodians choose to furnish its customers and clients with a substitute tax statement rather than the original IRS forms. This can be done for many reasons. The financial institution wants to review the tax statements it is furnishing and determine that such substitute statement do meet the IRS requirements for such substitute statements. If the

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SEPs — The Last-Minute Retirement Plan and Tax Deduction

Definitions

SEP — SEP is the acronym for Simplified Employee Pension plan. In order to have a SEP, two requirements must be met. First, an employer must sign a SEP plan document which may be: (1) the IRS model Form 5305-SEP; (2) a SEP prototype; or (3) a SEP plan as written specifically for that employer by an attorney. The employer may be a gigantic corporation or a self employed person. Second, all eligible employees must establish (or have established for them) a SEP-IRA.

SEP-IRA — A SEP-IRA is a standard, traditional IRA established with a financial institution to which an employer has made a SEP-IRA contribution. The IRA custodian is required to report SEP-IRA contributions in box 8 on Form 5498. In all other respects, the standard, traditional IRA rules will apply to administering SEP-IRAs. Contributions to SEP-IRAs are always owned by the employee, once the funds have been contributed to the employee's SEP-IRA.

Discussion

SEP plans may be established and funded by the normal tax deadline, plus extensions. A person may come into your institution in July of 2014, and make a SEP contribution of $51,000, for tax year 2013. If an individual has the proper extension(s) a SEP contribution may be made as late as October 15 of 2014, for tax year 2013.

The Contribution Rules Applying to SEPs are Very Favorable

1. The maximum contribution for 2013 is the lesser of $51,000, or 25% of a person's compensation. The limit for 2014 is $52,000.

2. The age 70 1/2 eligibility rule which applies to traditional IRAs does not apply to SEP-IRAs. A farmer who is age 74 and still farming and has net income, may still make contributions to their SEP-IRA. A corporation (and any other employer) is required to make a contribution for any employee age 70 1/2 or older, as long as the employee has met the eligibility requirements. The age discrimination laws prohibit an employer from not making such contributions. An employee may not waive the contribution.

3. All contributions made to a SEP-IRA by an employer are employer contributions, and are reported in box 8 of Form 5498. However, an individual is permitted to make his or her annual traditional IRA contribution to the same IRA to which a SEP contribution is made. Annual contributions are reported in box 1 on Form 5498. Such annual contributions may or may not be deductible.

4. An employer is not required to make SEP IRA contributions each year. Contributions are also discretionary as to amount.

5. The contributions which an employer makes for its employees are deductible by the business entity on its tax return. A corporation will claim the deduction on Form 1120. A partnership will claim the deduction on Form 1065, and partners will be informed of their respective shares on Schedule K-1. A sole proprietor may deduct SEP contributions on his or her Schedule C for Form 1040.

6. Contributions by the employer to a person's SEP-IRA are not taxed for income tax purposes, withholding purposes, social security income tax purposes, medicare tax purposes, or federal unemployment income tax purposes.

7. There are special contribution rules for self employed individuals. A self-employed individual does "deduct" his or her contribution amount to a SEP-IRA on Form 1040. That is, the amount contributed to the SEP-IRA is not excluded from income, as occurs for corporate employers. Since the maximum contribution is the lesser of 25% of compensation, or $51,000 for 2013, one must calculate the "compensation" for a self-employed individual. Compensation for a self-employed person is his or her net earnings from self-employment, as decreased by (1) the amount contributed to their SEP-IRA, and (2) 50% of his or her self-employment tax (the IRS has a special chart and formula to be used for this calculation).

8. An employer is required to provide each employee with an annual statement indicating the amount contributed to the employee's SEP-IRA for the year. A self-employed person is not required to prepare a statement for himself.

Other IRA Rules Applying to SEPs

All of the standard distribution rules and other rules which apply to traditional IRAs also apply to SEP-IRAs. The required distribution rules apply. Example: John Thomas, age 74 is a self-employed farmer who had compensation of $64,000 for 2013. His SEP-IRA balance as of 12/31/13 was $84,000. On April 13, 2014, he made the maximum allowable contribution to his SEP-IRA — $16,000 (25% of his 2013 compensation), and designated it for tax year 2013. Because Mr. Thomas is older than age 70 1/2, he must take a 2014 RMD. The custodian of Mr. Thomas' IRA sent him his RMD notice in January of 2014. Mr. Thomas' RMD will be calculated using the 12/31/13 balance of $84,000. The $16,000 contributed on 4/13/14, does not change the 2014 RMD amount, even though the contribution was designated for 2013. Because SEPs are reported on a calendar year basis, the 12/31 balance of the prior year is always used to calculate the RMD for the current year.

Summary. Because SEPs and SEP-IRAs are easy to establish and administer, financial institutions should be actively seeking these accounts. These accounts could result in greatly increased deposits for your institution. For your information, CWF has a lobby brochure available for you to give to potential employers, which explains the benefits of SEP accounts in easy-to-understand language.

Substitute Statements,
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substitute statement is found unacceptable, the IRS may well seek to assess the applicable fine amount - $50 per statement or $100 per statement.

5498 Reporting for SEP-IRAs

Summary of Reporting Duties for SEPs

Form 5498, IRA Contribution Information, must be submitted to the Service by the trustee or issuer of a SEP IRA to report contributions to the SEP IRA under a SEP plan. A separate Form 5498 must be submitted for each SEP IRA.

Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., is used to report distributions from a SEP IRA.

Reporting SEP contributions continues to be an unnecessarily complex problem. The procedure is actually quite logical and easy. The problem is that software has not caught up with a 1996 change. <u>SEP contributions are reported on the IRS Form 5498 based on the calendar year of receipt by the custodian/ trustee, not based on the tax year the contribution is for. Said another way, SEP contributions are reported IN the year they are received NOT FOR the year they are received.</u> Even though the custodian/trustee must report the contributions in the year they are received, the employer can deduct the SEP contributions in the proper tax year on their tax returns, as long as the contributions were made correctly and timely. One of the problems seems to be in the limited number of transaction codes and transaction explanations that are available in many IRA reporting systems. The term "Prior-Year Contribution" is much too general and does not get reported the same way for SEPs as it does for traditional and Roth IRAs. If prior-year SEP contributions are made, the amounts in Box 8 will not agree with the amounts the SEP IRA accountholders are expecting; an IRA custodian/trustee may find it beneficial to furnish a written explanation to its SEP accountholders.

The 2013 Form 5498 boxes to be used in reporting SEP contributions are the following:

Box 1 **IRA Contributions —** An individual may make his or her regular contribution for the 2013 year between January 1, 2013, and April 15, 2014, to the same IRA to which the employer's SEP contribution is made. Because the making of the SEP contribution results in the person being an active participant, the proper MAGI test will need to be used to determine what portion of the contribution, if any, qualifies to be deducted.

Box 2 Rollover contributions — If there are any rollovers into the SEP IRA during the period of January 1 - December 31, 2013, the amounts are reported here.

Box 4 Recharacterizations — It is possible for a SEP IRA to also have traditional IRA contributions. Therefore it is possible to have a recharacterization in an IRA that has both SEP and traditional IRA contributions. However, SEP contributions cannot be recharacterized.

Box 5 Fair market value of account — The December 31, 2013, FMV is reported here. It must agree with the year-end FMV statement sent to the accountholder in January 2014.

Box 7 IRA SEP — The IRS instructions indicate to check the IRA box if it is a traditional IRA and to check the SEP box if it is a SEP IRA. The instructions are silent if the account has both traditional and SEP contributions. CWF believes the SEP box is checked

Box 8 SEP Contributions — Insert the aggregate amount of employer contributions made from January 1 to December 31, 2013, regardless of the tax year for which the contribution(s) were made.

Example 1: James Smith, self-employed consultant, contributes his 2013 SEP contribution, in the amount of $5,000, on April 15, 2014. This must be reported by the custodian/trustee on the 2014 5498, NOT THE 2013 5498. However, Mr. Smith is allowed to deduct the contribution on his 2013 tax return.

Example 2: James Smith, self-employed consultant, contributes his 2013 SEP contribution, in the amount of $4,000, on August 15, 2014. This must be reported by the custodian/trustee on the 2014 5498. ?

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TRUSTEE'S or ISSUER'S name, street address, city or town, province or state, country, and ZIP or foreign postal code	1 IRA contributions (other than amounts in boxes 2-4, 8-10, 13a, and 14a) $	OMB No. 1545-0747 **2013** Form **5498**	**IRA Contribution Information**
	2 Rollover contributions $		
TRUSTEE'S or ISSUER'S federal identification no. / PARTICIPANT'S social security number	3 Roth IRA conversion amount $	4 Recharacterized contributions $	**Copy A** **For Internal Revenue Service Center** **File with Form 1096.**
	5 Fair market value of account $	6 Life insurance cost included in box 1 $	
PARTICIPANT'S name	7 IRA ☐ SEP ☐	SIMPLE ☐ Roth IRA ☐	For Privacy Act and Paperwork Reduction Act Notice, see the **2013 General Instructions for Certain Information Returns.**
	8 SEP contributions $	9 SIMPLE contributions $	
Street address (including apt. no.)	10 Roth IRA contributions $	11 Check if RMD for 2014 ☐	
	12a RMD date	12b RMD amount $	
City or town, province or state, country, and ZIP or foreign postal code	13a Postponed contribution $	13b Year / 13c Code	
	14a Repayments $	14b Code	
Account number (see instructions)			

Form **5498** Cat. No. 50010C www.irs.gov/form5498 Department of the Treasury - Internal Revenue Service

Special Explanation — For SEP-IRA Accountholders and Accountants

An IRA custodian may use the following explanation (by making a copy) to explain to your SEP customer how SEP contributions are reported to the IRS.

The purpose of this explanation is to detail how we, as your IRA custodian, are required to report contributions to your SEPIRA to the IRS on Form 5498.

When we receive a contribution to your SEP-IRA, we are to consider it made by the "employer" for benefit of you, the "employee." If a business is unincorporated, the "employer" is considered to be self-employed, and will either be an individual (i.e. sole proprietor) or a partnership. When you are self-employed, you are both the "employee" and the "employer."

The SEP-IRA custodian reports the SEP-IRA contribution in Box 8 of the Form 5498 for the year in <u>which the contribution is received</u>, regardless of the employer's tax year for which it was contributed. The reason for this is that the employer's deadline for making its SEP contribution is its tax-filing deadline plus extensions.

The April 15 deadline which applies to traditional and Roth IRAs does not apply to SEP-IRA contributions. The "plus extension" rule means that a business (i.e. the employer) may make its contribution for the prior year after May 31 of the current year (e.g. on August 13, 2014, an employer may contribute funds for the 2013 tax year). Note: The Form 5498 is required to be furnished to you, the SEP-IRA accountholder, by May 31 of each year (unless May 31 is a holiday or a Saturday or Sunday; then it must be furnished by the next working day).

The IRS instructions for Box 8 of the 2013 Form 5498 read as follows:

> "Enter employer contributions made to a SEP-IRA (including salary deferrals under a SARSEP) during 2013, including contributions made in 2013 for 2012, but not including contributions made in 2014 for 2013. Do not enter employee contributions to an IRA under a SEP plan. Report any employee contributions to an IRA under a SEP plan in box 1. Also include in box 8 SEP contributions made by a self-employed person to his or her own account."

Tax Reporting by the Employer— The business entity is entitled to claim a tax deduction on the tax return for which the contribution was designated. The Form 5498 does not inform the IRS of the employer's tax year for which the contribution was made. It merely informs the IRS of the fact that an employer made a contribution on behalf of an employee during a specific calendar year.

Email Q & A on Rollovers

Q-1. A client has requested a "direct transfer" from a 401(k) to an IRA. I know these were permitted years ago without a 1099-R/5498 requirement. What is required now or is this still permitted?

A-1. I do not have the same understanding. I don't believe IRS rules have ever allowed a direct transfer from a pension plan/401(k) plan to an IRA so that no IRS reporting would need to be done. If you have something I could review, I will.

A direct transfer may occur between two pension plans or two like-kind IRAs, but not a pension plan and an IRA.

A direct rollover occurs when funds move from the pension plan to an IRA. The pension plan is required to prepare a form 1099-R and the IRA custodian will report the rollover contribution on the 5498 form in box 2. Your client's situation is a direct rollover and there would need to be IRS reporting.

Q-2. I do have a follow up question regarding the rule about one rollover per year. If I request a direct rollover from a QP to an IRA, am I limited to one? Or is it only when funds are paid directly to me and then I roll them over?

A-2. The one per year rollover rule only applies to IRA distributions. It does not apply to distributions from 401(k) or other pension plans.

If funds are within a 401(k) plan, a person may have an unlimited number of direct rollovers or rollovers.

Q-3. We were in the process of informing our customers when our Compliance Officer realized the new ruling does not take effect until 2015 and would like to hold off until then, especially if it could possibly be overturned. So we would like to know, can we wait until 2015?

A-3. Yes the bank may wait. The January 1 deadline is a

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SIMPLE-IRA Fees,
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What Records Must the Roth IRA Accountholder and/or Beneficiary Keep?

When a person withdraws funds from an IRA or pension plan, the IRS takes the tax administrative position that the distribution must be included in the person's income and he or she must pay the related income taxes unless able to explain and prove why the distribution is not taxable. The key term is prove. The IRS has not discussed this proof requirement as clearly as is needed.

The tax goal with a Roth IRA is to have the distributions be qualified and be tax-free. The person or entity withdrawing Roth IRA funds from a Roth IRA must be able to prove to the IRS that the requirements needed to be met to have a qualified distribution have been met.

A copy of the individual's first Roth IRA plan agreement must be kept. It will show the date the Roth IRA was first opened and for what tax year. If a person is not able to locate the plan agreement, the individual could furnish a copy of the earliest FMV statement that can be found. The goal is to be able to prove that the Roth IRA has been in existence for five (5) years and that the 5-year requirement has been met. And copies of all Roth IRA amendments should be kept.

Presumably,if the Roth IRA would not be a qualified Roth IRA at the time of distribution, any earnings would be taxable, but the basis would not be.

Certain Roth IRA distribution forms as previously completed by the Roth IRA accountholder or inheriting beneficiary must be kept.

Remember that a distribution by a Roth IRA accountholder age 59 1/2 or old is qualified once the five year requirement has been met and all subsequent distributions are also qualified. It would seem logical then that the individual or the beneficiary would no longer be required to keep copies of the 5498 forms, 1099-R forms and Form 8606; but the IRS instructions do not state this.

A Roth accountholder who is not yet age 59 1/2, but is disabled will have a qualified distribution as long as the five year rule has been met. A doctor's certification of disability is needed.

And a Roth accountholder who is not yet age 59 1/2, but who makes a first time homebuyer distribution will have a qualified distribution as long as the five year rule has been met and the individual is able to prove that the distribution meets the requirements need to have a first time home buyer distribution.

Any distribution to a Roth IRA beneficiary will be qualified once the five year requirement has been met. The beneficiary will want proof the Roth IRA accountholder has died, that he or she was the designated beneficiary, and that the five year 'requirement has been met.

What Records Must Be Kept If a Person Has Basis Within An IRA?

Basis or the nontaxable portion of an IRA may arise for two main reasons. First, a person has made nondeductible annual contribution(s) to the traditional IRA or Roth IRA. Second a person had made nondeductible contribution to a pension plan and later had rolled such funds over into a traditional IRA or a Roth IRA.

The IRS in the instructions for Form 8606 states that the following records must be kept:

1. Form 5498 for each year the person made an IRA contribution to either a traditional IRA or a Roth IRA.
2. Form 5498 for each year the person received a distribution from a traditional IRA or a Roth IRA. It must show the FMV for such year.
3. Form 8606 for all applicable years.
   For traditional IRAs, Form 8606 must be completed for any year a nondeductible contribution was made for such year and also for any year a person takes a distribution when he or she has basis within his or her traditional(s).
   For Roth IRAs. Form 8606, must be completed when the individual makes a conversion contribution or takes a nonqualified distribution. Form 8606 is not completed when the individual takes a qualified distribution.

4. Form 1099-R for each year the individual received a distribution. At one time in the 19801s, there was also a Form W-2P. This too must be kept.
5. Page 1 of Forms 1040, 1040A,1040NR or 1040-T for each year a nondeductible contribution was made to a traditional IRA.

How Expensive Will the Expired QCD Rules Be If Extended?

The Qualified Charitable Distribution rules expired December 12, 2013. Time will tell if these rules will be extended on a retroactive basis for 2014 and 2015. Apparently, the entire Congress will not address this subject until after the November 2014 elections.

The charitable industry has a very strong lobby and it is working to extend the QCD rules for at least 2 more years and maybe make the law change permanent.

Recently, the Senate Finance committee passed a tax bill, Expiring Provisions Improvement Reform and Efficiency (EXPIRE) Act containing 45 tax laws which expired on December 31, 2013, but under this Act would be extended for two additional years.

2 year extension of the QCD rules is estimated to cost $1.8 million over 10 years. That is, tax revenues will be less by .8 billion due to the estimated QCDs to be made in 2014 and 2015. This same cost ($1.8 billion) is estimated for extending the deduction for mortgage insurance deductions and the New Markets Tax Credit program.

There are 9 other provisions having a cost greater than $1.8 billion over 10 years. Each of the other 33 provisions have a cost of less than $1.8 billion over 10 years. The largest cost would be $10.4 billion over 10 years for extending for 2 years a law allowing the U.S. parent of a foreign subsidiary engaged in banking, financing, or similar business to defer tax on the subsidiary's earnings as long as the subsidiary is predominately engaged in such business and conducts substantial activity.

Email Q&A,
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tentative deadline. The IRS could grant additional time to comply with the new rule The new rule will not be revoked unless there would be some major changes at the IRS which I do not foresee.

If the IRS would not grant more time, a bank would need to send its IRA accountholders the information before December 31st, probably no later than November 30th.

A bank may still send out the information in May of 2014 explaining the new rule to be adopted, but that it will not be effective until January 1, 201 5. Not everything needs to be delayed.

Q-4. I need to state this as clearly as possible to all my staff members that handle IRAs. My Manager is asking questions.

If a customer comes in to perform a Rollover today, that will be the only rollover they can process in a 12-month period now, is that correct?

A-4. Yes, you are correct. The tax law requires a year (12 months) must pass from the time a distribution is withdrawn and which is rolled over, before a subsequent distribution is eligible to be rolled over.

If today's distribution is rolled over, then an individual would have to wait until 12 months from the distribution before being able to take a subsequent IRA distribution and then roll it over by making a rollover contribution. And the individual should sign a rollover certification form that there has been no previous distribution from an IRA (traditional, Roth, SEP or SIMPLE) with Webster Five or another IRA custodian which was rolled over within the preceding 12 months.

The conservative approach is – a person who takes a distribution on 2-28-14 must wait until on 3-1-15 or later to take another distribution to be rolled over. By waiting until the following day (i.e. March I), the person will not need to be concerned about the time of day he or she took the initial distribution.

Note – the above answer was given before the IRS had announced the special transition rule that the new rollover will apply only to distributions occurring after December 31, 2014.