The Pension Digest

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ALSO IN THIS ISSUE – -

New IRS Procedures For Reporting Late Rollover Contributions

In the August Pension Digest we discussed the IRS' new alternative procedure for waiver of the 60 day rollover rule. The IRS stated that it would be modifying the Form 5498 so that an IRA custodian which accepts a rollover contribution because the individual has furnished a self-certification rollover form will complete this individual's Form 5498 to report that the rollover contribution was accepted/made after the 60 day deadline. From these 5498's the IRS will be able to develop a list of all those individuals who made their rollover contribution after the 60 day limit and the IRS can then decide to audit some or all of these taxpayers.

The 2017 form 5498 is set forth below. Note, the IRS did not change the title/caption of any box to mention late rollover contributions. reporting late rollovers will be done by completing certain Postponed contribution boxes. Boxes 13a and 13c will need to be completed. Taxpayers will find this confusing.

The IRS is relying that the IRA issuers and the IRA accountholders will read (and understand) the IRS instructions. For any IRS reporting from the IRS has instructions for the Issuer of the form (the IRA custodian or trustee) and also has instructions for the individual.

The IRS was certainly under severe time pressures to come up with a procedure allowing an IRA custodian to inform the IRS that an individual had made his or her rollover contribution after the 60 day time period as permitted by Revenue Procedure 2016-47

Hopefully, the IRS will improve the procedures for reporting late rollover contributions for 2018.

☐ CORRECTED (if checked)

TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, 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 2017 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 B
	5 Fair market value of account $	6 Life insurance cost included in box 1 $	For Participant
PARTICIPANT'S name	7 IRA ☐ SEP ☐	SIMPLE ☐ Roth IRA ☐	This information is being furnished to the Internal Revenue Service.
	8 SEP contributions $	9 SIMPLE contributions $	
Street address (including apt. no.)	10 Roth IRA contributions $	11 If checked, required minimum distribution for 2018 ☐	
	12a RMD date	12b RMD amount $	
City or town, state or province, country, and ZIP or foreign postal code	13a Postponed contribution $	13b Year / 13c Code	
	14a Repayments $	14b Code	
Account number (see instructions)	15a FMV of certain specified assets $	15b Code(s)	

Form 5498 (keep for your records) www.irs.gov/form5498 Department of the Treasury - Internal Revenue Service

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

The IRS instructions for boxes 13a, 13b and 13c are set forth below. These are the instructions for the IRA custodian.

Box 13a. Postponed Contribution
Report the amount of any postponed contribution made in 2017 for a prior year. If contributions were made for more than 1 prior year, each prior year's postponed contribution must be reported on a separate form. Report the amount of a late rollover contribution made during 2017 and certified by the participant. See Rev. Proc. 2016-47 is available at *www.irs.gov/irb/2016-37_IRB/ar09.html*. If the participant also has a postponed contribution, use a separate Form 5498 to report a late rollover.

CWF Discussion. Report the amount of a late 2017 rollover contribution if the individual furnished the IRA custodian with his/her self-certification. A separate Form 5498 with box 13a is to be completed if their person also made a postponed contribution. The instructions do not discuss the possibility of two late rollovers. We believe the IRS instructions do discuss that two separate 5498 forms should be filed. The IRS instructions do discuss that there must be separate 5498 forms filed if there were postponed contributions for more than one prior year.

Box 13b. Year
Enter the year for which the postponed contribution in box 13a was made. Leave this box blank for late rollover contributions.

CWF Discussion. This box is left blank if the contribution being reported in Box 13a is a late rollover contribution.

Box 13c. Code
Enter the reason the participant made the postponed contribution.

For participants' service in a combat zone, hazardous duty area, or direct support area, enter the appropriate executive order or public law as defined under *Special reporting for U.S. Armed Forces in designated combat zones,* earlier.

For participants who are "affected taxpayers," as described in an IRS News Release relating to a federally designated disaster area, enter FD.

For participants who have certified that the rollover contribution is late because of an error on the part of a financial institution, death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, postal error, or other circumstance listed in Section 3.02(2) of Rev. Proc. 2016-47 or other event beyond the reasonable control of the participant, enter C.

CWF Discussion. A "C" is to be inserted in this box if the individual has self-certified that his or her rollover was rolled over after the 60 day limit for one of the events set forth in Revenue Procedure 2016-47.

The IRS also furnishes "instructions" to the individual on the reverse side of Copy A of Form 5498. Set forth below are the instructions for boxes 13a, 13b and 13c.

Box 13a. Shows the amount of a late rollover contribution made in 2017 and certified by the participant, or a postponed contribution made in 2017 for a prior year.

Box 13b. Shows the year to which the postponed contribution in box 13a was credited. If a late rollover contribution is shown in box 13a, this box will be blank.

Box 13c. For participants who made a postponed contribution due to an extension of the of the contribution due date because of a federally designated disaster, shows the code FD.

For participants who serviced in designated combat zones, qualified hazardous duty areas, or in direct support areas, shows the appropriate code. The codes are: EO13239 for Afghanistan and associated direct support areas, EO12744 for the Arabian Peninsula areas, and EO13119 (or PL106-21) for the Yugoslavia operations areas. For additional information, including a list of locations within the designated combat zones, qualified hazardous duty areas, or direct support areas, see Pub. 3. For updates to the list of locations, go to www.irs.gov/form 5498.

For a participant who has used the self-certification procedure for a late rollover contribution, shows the code SC.

CWF Discussion: These instructions inform the indi-

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vidual that he or she made his or her rollover after the 60 day deadline, but the IRA custodian accepted the rollover contribution because he or she self-certified that one of the exceptions as listed Revenue-Procedure 2016-47 was met. The individual will want to consider if he or she should furnish additional information at the time the return is filed explaining why equity and fairnesss means he or she qualified for a new rollover period or if he or she should wait for the IRS to contact him/her and furnish additional information at that point in time. The instructions for lines 15a and 15b should be reviewed for additional IRS guidance on the proper reporting of a rollover contribution.

Admittedly the IRS' announcement in August of its new self-certification rollover procedure left the IRS little time to create a procedure for an IRA custodian to report that an IRA account holder who had self-certified his or her 2017 rollover because he or she missed the 60 day deadline for one of the reasons set forth in Revenue Procedure 2016-47. Note that this special procedure only applies with respect to missed rollovers into an IRA on account of missing the 60 day limit. It does not apply to missed rollovers on account of the 60 day limit. It does not apply to missed rollovers on account of the 60 day rule into a qualified plan.

Also note, there is no discussion of how an IRA custodian and/or the IRA account holder is to report a late 2016 IRA rollover which the individual self-certified. CWF's recommendation is that the tax payer should attach a copy of his/her self-certification as furnished to the IRA custodian with a note of explanation.

2014 IRA STATISTICS

2014 IRA Statistics and Other Tax Statistics In the September newsletter we discussed some of the political issues relating to IRAs. The federal government i.e. the IRS) is looking to collect substantial tax revenues when distributions occur from traditional IRAs, SEP-IRAs and SIMPLE IRAs. These IRAs are tax-preferred accounts and not tax-free accounts.

The IRS has recently released some IRA statistics as derived from the 2014 Form 5498s and other 2014 tax forms.

The total number of taxpayers filing a return for 2014 was 202.5 million (202,530,196) .

57.3 million individuals have at least one of the four types of IRAs. This is a little more than 25%. For each IRA in the United States the IRA custodian/trustee annually prepares the Form 5498 to report the IRA'S fair market value and also the reportable" contributions.

7.3 trillion dollars are within the four types of IRAs. ($7,291,587,418,000) .

45.3 million individuals have a traditional IRA and the average balance is $137,258 since there is 6.2 trillion dollars in traditional IRAs. Again, much of this balance is attributable to rollover contributions as discussed later.

18.6 million individuals have a Roth IRA and the average balance is $32,251 since there is 600 billion dollars in Roth IRAs.

3.2 million individuals have a SEP-IRA and the average balance is $114,220 since there is 367 billion dollars in SEP-IRAs. The average balance is large as the SEP-IRAs allow large annual contributions.

2.76 million individuals have a SIMPLE-IRA and the average

balance is $36,066 since there is 100 billion dollars in SIMPLE-IRAs.

There are two primary types of IRA contributions - rollovers and annual (sometimes called regular) contributions. Both are important but rollover contributions are much larger (435 billion dollars versus 63 billion dollars) and consequently are more important and will be discussed first.

Rollovers into IRAs

Rollovers into IRAs are important for all involved parties - the individual, the IRA custodian/trustee and the 401(k) plans. Rollovers are a tax subject and so certain rules must be met or the expected/desired tax benefits will not be realized. Rollover situations require the individual to make tax and financial planning decisions.

4.9 million taxpayers made a rollover contribution to one or more of the four types of IRAs.

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4.5 million made a rollover contribution to a traditional IRA.

341,629 made a rollover contribution to a Roth IRA.

51,668 made a rollover contribution to a SEP-IRA.

6,647 made a rollover contribution to a SIMPLE IRA.

434.8 billion dollars were rolled over into one of the four types of IRAs .

423.9 billion dollars were rolled over into a traditional IRA or $91,489 per person.

6.7 billion dollars were rolled over into Roth IRAs or $19,567 per person

4.8 billion dollars were rolled over into SEP-IRAs or $93,232 per person.

.4 billion dollars were rolled over into SIMPLE-IRAS or $58,195 per person

Rollover Chart summary:

Size of AGI	Number of Taxpayers	Rollover Amount	Average
No MAGI	41,067	$2,788,340,000	$67,897
$1 - $19,999	382,977	$15,803,165,000	$41,264
$20,000 - $29,000	279,289	$10,860,978,000	$38,888
$30,000 - $39,000	282,980	$11,251,524,000	$39,761
$40,000 - $49,000	292,484	$11,809,385,000	$40,376
$50,000 - $74,000	732,203	$43,073,467,000	$58,827
$75,000 - $99,000	728,878	$54,396,582,000	$74,631
$100 M - $199,000	1,408,048	$144,447,514,000	$102,487
$200 M - $499,000	585,931	$100,812,445,000	$172,055
$500 M - $999,999	92,157	$23,904,227,000	$259,386
$1,000,000 or more	45,178	$15,666,997,000	$346,784
Totals	**4,871,192**	**$434,814,624,000**	**$89,262**

CWF Observations

1. Rollovers of $424 billion were made in 2014 into traditional IRAs.
2. 4.9 million taxpayers made a rollover.
3. The average rollover of all taxpayers was $89,262.
4. The average rollover of taxpayers with MAGI of less than $40,000 was $40,174, but those taxpayers with no MAGI were excluded.
5. Taxpayers with MAGI between $100,000 - $200,000 rolled over $144 billion or an average of $102,587.
6. Taxpayers with MAGI above $200,000 had rollovers averaging $194,097.
7. Taxpayers with MAGI exceeding $1,000,000 had rollovers averaging $346,784.

Annual IRA Contributions for 2014 - Traditional, SEP, SIMPLE, and Roth

155.5 million individuals were eligible to make one or more of the four types of IRA contritions (155,481,151).

12.8 million taxpayers made/received one or more of the contribution types.

6.3 million made a Roth IRA contribution.

4.3 million made a Traditional IRA contribution.

1.7 million made a SIMPLE IRA contribution.

1.1 million made a SEP-IRA contribution.

62.7 billion ($62,745,693,000) was contributed to IRAs in 2014.

21.9 billion to Roth IRAs ($21,868,086,000) or $3,470 per person.

17.5 billion contributed to Traditional IRAs ($17,515,419,000) or $4,073 per person.

14.6 billion contributed to SEP-IRAs ($14,566,424,000) or $13,349 per person.

8.8 billion contributed to SIMPLE IRAs ($8,800,764,000) or $8,065 per person.

CWF Observations

1. Roth IRAs lead - largest number of contributor and largest amount contributed. Traditional IRAs are second both in number and contributions and by amount.
2. SEP-IRAs have the fewest number of contributors, but the amount of contributions of 14.6 billion is a close third to the 17.5 billion being contributed to SIMPLE IRAs.
3. IRAs are being under-used. Annual IRA contributions are being made only 8.3% (12.8 million out of 155.5 million taxpayers) who are eligibles to make an IRA contribution. People are missing opportunities to make IRA contributions. Higher-income individuals need to be informed why it is in their best interest to make non-deductible traditional IRA contributions and why it is well worth their time and effort to do so.

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Annual Traditional IRA Contributions for 2014

Traditional IRA contributions may either be deductible or nondeductible. The individual claims the deduction on his or her Form 1040 or Form 1040A. The individual reports any non-deductible contribution on Form 8606.

3.74 million is the total numbers of IRA contributors (3,736,377).

The total contributions were 17.5 billion ($17,515,419,000).

3.20 million claimed a tax deduction for contributions totalling

$13.2 billion. The average deductible contribution was $4119.

3.2 million is an extremely small considering that W-2 information shows that 155.5 million individuals are eligible to make an IRA contribution and that only 71.4 million are active participants in a 401(k) or other employer sponsored retirement plan. We at CWF estimate that only 3.2 million out of 90 million eligible taxpayers are making deductible contributions.

.54 million individuals made non-deductible IRA contributions. They contributed $4.3 billion. The average non-deductible contribution was $7963.

CWF Observations

1. Opportunities are being missed since 155.5 million individuals are eligible to make a non-deductible IRA contribution, but only 540,000 do so. One would think individuals with higher incomes would make non-deductible contributions but they don't.
2. There were $4.3 billion nondeductible contributions out of total contributions of 17.5 billion.
3. The number of individuals making deductible IRA contributions is also much smaller than one would think. For whatever reason, individuals are not making annual contributions. Some of this no contribution approach is due to the national economy since 2008. Much of it is due to 401 (k) plans. An individual only has so many funds available for retirement savings and clearly the large majority of individuals put 100% into their employer's 401(k) plan rather than their IRA. One can argue that it is prudent to diversify and not have all retirement funds at one location, but it appears individual do not follow this course.

Annual SEP-IRA Contributions for 2014

The 2014 Form 5498 shows that 1,091,203 taxpayers had SEP-IRA contributions totalling $14.6 billion ($14,566,424,000). The average contribution was $13,349.

Self-employed individuals claim a tax deduction on their individual Form 1040. Individuals who are employed by an employer who sponsors the 401(k) plan do not claim a tax deduction as these amounts are excluded from his/her income for most tax purposes.

There were 439,170 self-employed individuals who claimed tax deductions totalling $7.9 billion ($7,897,484,000). The average deductible SEP-IRA contribution was $17,983.

There were 652,033 individuals who received a SEP-IRA contribution from their employer. The total of such non-deductible" contributions was $6.7 billion ($6,668,940,000). The average nondeductible SEP-IRA contribution was $10,228. Although, the individual does not claim a tax deduction, but the employer certainly will.

CWF Observations

1. Certain small businesses love SEP-IRAs as the rules permit a person to make a SEP-IRA contribution of $53,000 for 2016 or 25% of compensation.
2. Owners (439,170) contributed $7.9 billion for themselves. The average contribution was $17,983.
3. The owners contributed 6.7 billion for their employees (652,033). The average contribution was $10,228.
4. An owner who wishes to contribute 25% of compensation for himself/herself, may be able to explain to an employee that his/her regular compensation may be "low", but once it is adjusted by the SEP-IRA contribution it is more market com-

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petitive. An employer would rather make a contribution into a person's SEP-IRA rather than pay a person in direct compensation because social security and medicare taxes are not paid on the SEP-IRA contribution amount.

Annual SIMPLE IRA Contributions for 2014

The 2014 Form 5498 shows that 1,759,895 taxpayers had SIMPLE-IRA contributions totalling $8.8 billion ($8,800,764,000). The average contribution was $5,001.

Self-employed individuals claim a tax deduction on their individual Form 1040. Individuals who are employed by an employer who sponsors the SIMPLE-IRA plan do not claim a tax deduction as these amounts are excluded from his/her income for most tax purposes.

There were 120,055 self-employed individuals who claimed tax deductions totalling $1.39 billion ($1,380,066,000). The average deductible SIMPLE -IRA contribution was $11,495.

There were 1,639,840 individuals who received a SIMPLE-IRA contribution from and through their employer. That, an employee made elective deferrals. Such elective deferrals are deemed to be employer contributions. The employer also make a matching or a nonelective contribution. The total of such unon-deductible" contributions was $6.7 billion ($6,668,940,000). The average nondeductible SEP-IRA contribution was $4,067. Although, the individual does not claim a tax deduction, the employer certainly will.

CWF Observations.

1. It certainly appears the SIMPLE-IRA plan is the retirement plan of preference for many small business with employees in addition to the owners.
2. There were only 120,055 SIMPLE IRA contributions made by self-employed owners. Their average contribution was $11,495.
3. 1,639,840 individuals (not self-employed owners) made SIMPLE contributions. Their average contribution was $4067. An owner of a small corporation is included in this category and one can surmise that many owner's contribution amount would exceed the $4067 and for many employees would be less.

Remember, that on the Form 5498, the SIMPLE IRA contribution amount reported is the total of the individual's elective deferrals plus the amount contributed by the employer.

Annual Roth IRA Contributions for 2014

6,300,696 taxpayers made annual Roth IRA contributions for tax year 2014.

$21.9 billion was contributed ($21,863,086,000).

The average contribution was $3470.

CWF Observations.

1. Roth IRAs are also under-used by most U.S. tax payers.
2. 6.3 million individuals made a Roth IRA contribution.
3. CWF1s estimate is that at least 85% of the 155.5 million or 125 million taxpayers would be eligible to make a Roth IRA contribution, but only 6.3 million do so. Opportunities are being missed. Not all of the 155.5 billion individuals listed as being eligible to one of the four types of IRA contributions is eligible to make a Roth IRA contribution because of the MAGI rules.
4. The average contribution amount of $3470 is

modest considering the maximum limits are either $5500 for individuals under age 50 and $6500 is age 50 or older.

Roth IRA Conversions

488,827 is the number of taxpayers who did a Roth IRA conversion in 2014.

$8,255,152,000 (8.2 Billion) is the amount converted in 2014.

Roth IRA Conversion Chart:

Size of AGI	Number of Taxpayers	Rollover Amount	Average
No MAGI	5,103	$273,996,000	$53,694
$1 - $19,999	17,566	$187,637,000	$10,682
$20,000 - $29,000	15,245	$160,586,000	$10,534
$30,000 - $39,000	17,794	$140,046,000	$ 7,870
$40,000 - $49,000	15,629	$280,001,000	$18,338
$50,000 - $74,000	54,986	$763,016,000	$13,877
$75,000 - $99,000	44,613	$718,169,000	$16,370
$100 M - $199,000	109,354	$1,910,272,000	$17,469
$200 M - $499,000	137,654	$2,253,352,000	$16,370
$500 M - $999,999	47,171	$ 726,319,000	$15,398
$1,000,000 or more	24,072	$ 841,759,000	$34,968
Totals	**488,827**	**$8,255,152,000**	**$16,888**

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CWF Observations

1. Roth IRA conversions made by 488,8027 out of 51.25 million taxpayers who had a traditional IRA, SEP-IRA or SIMPLE IRA. This is less than 1%.
2. The amount of Roth IRA conversion contributions was $8,255,152,000. The amount eligible to be converted was $6,691,587,418,000 or 1.23%.
3. One surmises if the economy improves there will be more conversions.
4. The conversion amounts average approximately $16,888 regardless of income with two exceptions. Individuals with no MAGI (presumably had some tax losses) on average had a conversion of $53,694 (to be offset by the loss) and those with income of 1 million or more had an average con version of $34,698.

Topic - Fair Market Value of IRAs as of 12-31-14

Size of AGI	Number of Taxpayers	FMV	Average
No MAGI	700,149	$71,788,340,000	$101,901
$1 - $19,999	5,637,556	$330,603,403,000	$58,643
$20,000 - $29,000	3,492,516	$239,820,195,000	$68,667
$30,000 - $39,000	3,640,458	$253,576,257,000	$69,655
$40,000 - $49,000	3,623,513	$277,931,389,000	$76,702
$50,000 - $74,000	8,872,132	$807,058,410,000	$90,966
$75,000 - $99,000	8,823,077	$928,218,700,000	$112,606
$100 M - $199,000	15,451,352	$2,303,331,336,000	$149,070
$200 M - $499,000	5,955,214	$1,459,528,603,000	$245,084
$500 M - $999,999	1,122,860	$383,175,335,000	$341,249
$1,000,000 or more	540,561	$236,997,566,000	$438,429
Totals	57,279,388	$7,291,587,420,000	$127,299

CWF Observations

1. The fact that 57.3 million taxpayers have one or more of the four types of IRAs shows their importance, if for nothing else to accept rollover contributions.
2. $4.29 trillion of IRA assets are "owned" by individuals with incomes exceeding $100,000. Most likely the tax rates applying to their distributions will be some 25%, but most at 39.6%. With respect to the $4.3 trillion, assuming an average tax rate of 30% means the IRS some day will collect $1.3 trillion of federal income taxes.

Email Consulting Guidance

How and Why Titling of Inherited IRAs?

Q1. When setting up a new account (funds to be transferred/rolled to our firm) for inherited IRA, do we need to add the deceased person's name to the official name of the account?

John Doe IRA FBO Susie Jones Inherited IRA OR

Susie Jones Inherited IRA

A1. You ask about two "naming/titling" approaches for an inherited IRA.

In the instructions for the Form 5498 the IRS suggests the approach - Susie Jones as beneficiary of John Doe's IRA. See attached.

Your first approach mentions the decedent's name first rather than the beneficiary and uses FBO rather than ABO. The beneficiary is the new account holder and I believe should be mentioned first.

The most conservative approach is to use the IRS suggested approach for both 5498 and 1099-R preparation purposes. There are tax reasons a beneficiary needs to know who was the original owner of the IRA.

Your second approach does not comply with the 5498 requirements as it does not mention the previous owner.

It would be possible to use a less descriptive title on standard IRA reports, but not on the Form 5498 or the annual statement.

My opinion, use the IRS suggested titling.

Effect of Waiting to Take 2015 RMD Between 1/1/16 to 4/1/16

Q2. I have a question. I have a person that turned 70-1/2 in 2015. She elected to take the distribution (RMD) for 2015 in January of 2016. In August she took her 2016 distribution;

I am not sure what needs to be done to accurately report the 2015. My code options don't include a "previous year" type option. I have "normal" or "previous year re-characterization."

A2. She includes the .RMD for 2015 in her 2016 income as she took this distribution in 2016. It is a normal distribution (reason code 7). Her RMD.distribution in August is also a normal distribution. Her 2016

Form 1099-R will show the combined amount.

No QCDs for Inherited IRAs if Beneficiary Younger than Age 70$^1/_2$

Q3. One of our nonprofit clients asked the following question:

If a donor who is say 30 has inherited an IRA with RMDs, can she donate the RMD to her charity and receive the charitable deduction?

Any insight you can provide will be appreciated.

A3. Good afternoon. See attached. To qualify to use the QCD rules, the IRA owner or the inheriting IRA beneficial) must be age 70 1/2 or older. Since the donor is only age 30, she is ineligible to use the QCD rules (exclusion from income).

She should talk with her tax advisor to determine her ability to claim a miscellaneous tax deduction for her charitable contribution on tax Schedule A (Form 1040) Publication 526 also should be reviewed.

Medicare and HSA Eligibility

Q4. I have an HSA customer who wants to know what she will be eligible to contribute in 2017, if any, as she turns 65 on 4-14-52.

A4. A person is ineligible to make an HSA contribution for the month she/he enrolls in Medicare and all subsequent months.

If she enrolls in April of 2017, then for 2017 she can contribute 3/12 (25%) of the applicable contribution limit as long as her contribution is made by 4-15-2018.

If she enrolls in March of 2017, then for 2017 she can contribute 2/12 (16.67%) of the applicable contribution limit as long as her contribution is made by 4-15-2018.

If she enrolls in February of 2017, then for 2017 she can contribute 1/12 (8.33%) of the applicable contribution limit as long as her contribution is made by 4-15-2018.

Contribution limit for single coverage for a person older than 55 is $4400.

Contribution limit for family coverage for a person older than 55 is $7750.

The 4-15-18 deadline might change due to the Emancipation Day holiday.

each year there is an uncorrected excess correction.

Thank you for being willing to assist me.

Flex Plans Can Negatively Impact HSA

Q6. Could you assist me on this situation please?

We have an employee of our bank, filling out our year-end enrollment forms for next year's payroll.

Our bank offers a Sect 1on 125 Flex plan (pre-tax) which she has done for many years.

Her spouse is a self-employed farmer, who carries his own separate medical insurance under a HDHP. He opened an HSA about 3 years ago.

Is there a law/regulation that because her husband has an HSA, that she cannot participate in the Section 125 Flex Plan, and why?

A6. She is eligible to participate in the section 125 plan.

The determination to be made is - does he become HSA ineligible because of her participation in the flex plan?

It depends upon how the flex plan has been written.

If only she can benefit under the flex plan, his HSA eligibility is not impacted.

If he any way is able to benefit from her participation the section 125 plan, then he is HSA ineligible. That is, does the plan allow her to use her funds in the flex plan to pay his medical expenses? For him to be HSA eligible the Flex plan must have a provision coordinating with the HDHP deductible limit so that she cannot use the flex funds to pay his medical expenses until he has met the deductible limit of the HDHP.