



THE Pension Digest

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President Trump, Congress and the Fiduciary Rule

On Friday February 3, 2017 President Trump issued a presidential memorandum on the Fiduciary duty rule. This memorandum is directed to the Secretary of Labor. President Trump has nominated Andrew Puzder who is presently the CEO of the company that owns the Hardees and Carl's Jr. companies. His confirmation hearing was initially scheduled for this week, but it has been postponed until late February or early March.

The Secretary of Labor is to determine if the Fiduciary rules may adversely affect the ability of Americans to gain access to retirement information and financial advice. If so, then the DOL is to start the process of revising and possibly repealing the rule by publishing a new rule for notice and comment.

This Presidential memorandum does not immediately repeal or suspend the new fiduciary rule. Some of the new DOL rules are in effect now and the new definition of fiduciary goes into effect on April 10, 2017. The complete BICE rules do not go into effect until January 1, 2018. There is not stated a suspension period. Some TV, radio and web news accounts had mentioned a suspension of the rule for a 60-90 time per period.

Link for Presidential Memorandum on Fiduciary Duty Rule

Unfortunately, financial institutions and financial representatives must comply with the new DOL rules until they are modified.

Although it appears Congress could have repealed this regulation by use of the Congressional Review Act, Congress

chose not to do so. In an email furnished in January we at CWF had stated it was subject to being repealed. This was incorrect.

CWF's suggestion is, within the next 3-9 months the Republican Congress should pass a new fiduciary law and President Trump should sign it. Congress and not the DOL should create new laws. The Fiduciary regulations are much too complicated and the costs far exceed the benefits. Your financial Institutions should communicate with your Congressional representatives.

A Person's 2016 Tax Filing Deadline Is April 18, 2017

Understanding the Impact of Emancipation Day and/or Patriot's Day on Tax Filing Deadline of April 15th

Emancipation Day is a legal holiday recognized in the District of Columbia. The IRS has ruled that the observance of this legal holiday has implications nationwide. Emancipation Day is April 16th of each year. However, if the 16th falls on Saturday, the holiday is observed on the preceding Friday (i.e. the 15th) and if the 16th falls on Sunday, it is observed on the following Monday (i.e. the 17th). In both cases the tax filing deadline of April 15th will be revised since the tax filing deadline cannot be a Saturday, Sunday or legal holiday. It will be the next day following a Saturday, Sunday, or legal holiday which itself is not a Saturday, Sunday or legal holiday.

Emancipation Day is April 16th of each year. If April 16th of a given year falls on a Tuesday, Wednesday, Thursday or Fri-

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Final Review 2016 Form 5498

☐ 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 2016 Form 5498		IRA Contribution Information	
		2 Rollover contributions				
TRUSTEE'S or ISSUER'S federal identification no.		3 Roth IRA conversion amount		4 Recharacterized contributions	Copy B	
		5 Fair market value of account		6 Life insurance cost included in box 1		
PARTICIPANT'S social security number		7 IRA <input type="checkbox"/> SEP <input type="checkbox"/> SIMPLE <input type="checkbox"/> Roth IRA <input type="checkbox"/>		This information is being furnished to the Internal Revenue Service.		
PARTICIPANT'S name		8 SEP contributions				9 SIMPLE contributions
		10 Roth IRA contributions				11 If checked, required minimum distribution for 2017 <input type="checkbox"/>
Street address (including apt. no.)		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
Account number (see instructions)		14a Repayments		14b Code		
		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

- On the bottom left there is an "Account Number" box. The IRA custodian is required to insert an account number in this box when filing more than one Form 5498 for the same person. If your institution wants to earn some bonus points with the IRS, you will complete this box even though it is not required. A unique number should be used. Using such a number helps the IRS to process corrected information accurately. The account number may be a checking or savings account number or some other unique number with respect to an individual. The number must not appear anywhere else on the form (i.e. it cannot be the social security number).
- In Box 7 only one of the 4 boxes must be checked to indicate the type of IRA. A person who has a traditional IRA, SEP IRA and Roth IRA would need to be furnished three 5498 forms.

- Box 1. IRA Contributions (other than amounts in boxes 2-4, 8-10, 13a and 14a). Enter the amount of the annual contributions made on or after January 1, 2016 through April 18, 2017 as designated for 2016. The IRA custodian is to report the gross amount of the annual contributions even if such contributions are excess contributions, or will be later recharacterized. These are still to be reported. A traditional IRA contribution, which is not properly reported in one of the other traditional IRA boxes as discussed below, is to be reported in box 1. For example, if a person tries to roll over \$28,000, but does so on day 70 and the IRA custodian learns of this fact prior to filing the current year's Form 5498, then the IRA custodian must report this \$28,000 in box 1. This same procedure would apply if somehow non-IRA funds had been mistakenly transferred into an IRA.

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4. **Box 2. Rollover Contributions.** Enter the amount of the rollover contributions made on or after January 1, 2016 through December 31, 2016. Made means received by the traditional IRA custodian.

A rollover may either be an indirect rollover or a direct rollover.

A direct rollover occurs when an employer plan issues the check to the IRA custodian on behalf of the individual. By definition, a direct rollover cannot occur between IRAs. Employer plan means a qualified plan, section 403(b) plan or a governmental section 457(b) plan. The funds attributable to a nonspouse beneficiary of such plans are eligible to be directly rollover to an inherited IRA and would be reported in Box 2.

An indirect rollover means the paying plan (could be an IRA or an employer plan) issues the distribution check to the individual who then makes a rollover contribution by the 60 day deadline. A 60 day indirect rollover may occur between two traditional IRAs, two SEP-IRAs, or between a traditional IRA and a SEP-IRA or vice versa.

Remember that nonspouse IRA beneficiaries are ineligible to roll over a distribution from one inherited IRA and redeposit it into another inherited IRA.

5. **Box 3. Roth IRA Conversion Amount.** This box will be completed when a conversion contribution is made to a Roth IRA.
6. **Box 4. Recharacterized Contributions.** The IRS instructions are very brief, "Enter any amounts recharacterized plus earnings from one type of IRA to another." If a person had made either an annual contribution or a conversion contribution to a Roth IRA in either 2015 and/or 2016, he or she may elect to recharacterize it as adjusted by earnings or losses to be traditional IRA contribution in 2015. The total amount recharacterized is to be reported in box 4. Although the IRS instructions use the term, "plus earnings, the IRS should use the term, "plus or minus earnings or losses."
7. **Box 5. Fair Market Value of Account.** The IRS

instructions for this box are also very brief, "Enter the FMV of the account on December 31."

The IRS added a caution to self-directed and trust IRAs as follows: "Trustees and custodians are responsible for ensuring that all IRA assets (including those not traded on established markets or with otherwise readily determinable market value) are valued annually at their fair market value."

The instruction to report the FMV as of December 31 applies whether there is a living IRA accountholder or an inheriting IRA beneficiary.

If the IRA accountholder or inheriting beneficiary is alive as of December 31, the individual closed his or her IRA during the year by taking a total distribution and he or she made no "reportable contribution", then the IRA custodian is not required to prepare and file the Form 5498. **However, if the IRA accountholder or inheriting beneficiary died during the year, the IRA custodian will need to prepare a final Form 5498 for the deceased IRA accountholder or inheriting beneficiary as discussed below.**

With respect to a deceased accountholder or a deceased inheriting IRA beneficiary, the IRS gives the IRA custodian two options. Option #1 - report the FMV as of the date of death. Option #2 - report the FMV as of the end of the year in which the decedent died. This alternate value will usually be zero because the IRA custodian will be reporting the end of year value on the Form 5498's for the beneficiary or beneficiaries. If Option #2 is used, the IRA custodian must inform the executor or administrator of the decedent's estate of his or her right to ask for the FMV as of the date of death.

If the IRA custodian does not learn of the individual's death until after the filing deadline for the Form 5498 (i.e May 31), then it is not required to prepare a corrected Form 5498. However, an IRA custodian must still furnish the FMV as of the date of death if requested to do so.

8. **Box 6. Life Insurance cost included in box 1.** An IRA custodian will normally leave this box blank

Form 5498,
Continued from page 3

or will insert a 0.00 since it is only to be completed if there was a contribution to an IRA endowment contract as sold by an insurance company a long time ago.

9. **Box 8. SEP Contributions.** Any SEP contributions made to the IRA custodian during 2016 are to be reported in box 8. Such contributions could have been for 2015 or 2016. Contributions made in 2017 for 2016 are to be reported on the 2017 Form 5498.
10. **Box 9. SIMPLE Contributions.** Any SIMPLE-IRA contributions made during 2016 are to be reported in box 9. Such contribution could have been for 2015 or 2016.
11. **Box 10. Roth IRA Contributions.** Any Roth IRA contributions for 2016 are to be reported in box 10 as long as made between January 1, 2016 and April 18, 2017.
12. **Box 11. Check if RMD for 2017.** An IRA custodian is required to check this box if the IRA accountholder attains or would attain age 70½ or older during 2017. The instructions do not discuss whether or not this box is to be checked for an inheriting traditional IRA beneficiary. It should not be checked for an inherited IRA. Completing this box is necessary only if the IRA custodian is required to prepare a 2016 Form 5498 for a person. This box is not checked with respect to an individual who died during 2016 and who would have attained age 70½ or older during 2017 had he or she lived.
13. **Boxes 12a (RMD date) and 12b (RMD Amount).** An IRA custodian's use of these two boxes is optional, it is not mandatory.

Under current IRS procedures, the IRS does not require the traditional IRA custodian to furnish it with the RMD amount. The law is unsettled whether or not the IRS has the legal authority to require that an IRA custodian furnish the RMD amount. Since the IRS would like to be furnished this information, the IRS has added boxes 12a and 12b to the Form 5498.

The approach adopted by the IRS is that a traditional IRA custodian by completing boxes 11,

12a and 12b on the Form 5498 and furnishing it to the IRA accountholder will meet the requirement that it must furnish a RMD Notice by January 31. The IRS instructions do permit the IRA custodian to furnish a separate Form 5498 with the only information being furnished is the information for boxes 11, 12a and 12b.

14. **Box 13a. Postponed contribution(s).** Since we are discussing completing the Form 5498 for a traditional IRA, we will discuss what needs to be done for postponed contributions to a traditional IRA. The individual will instruct you on an IRA contribution form the "prior" year or years for which he or she is making the postponed contribution(s). The individual must designate the IRA contribution for a prior year to claim it as a deduction on the income tax year.

Postponed contributions may be made by individuals who have served in a combat zone or hazardous duty area or individuals who are "affected taxpayers" due to federally designated disasters.

If the IRA custodian will report the contribution made after April 15 and the individual designates a contribution for a prior year, then the IRA custodian must prepare either (1) a Form 5498 for the year for which the contribution was made or (2) on a Form 5498 for a subsequent year.

Under approach #1, the IRA custodian may choose to report the contribution for the year it is made. For example, if an individual in September of 2016 designated a contribution of \$5,500 to a traditional IRA for 2014. The IRA custodian could choose to prepare a 2014 Form 5498 and report the \$5,500 contribution in box 1. If the IRA custodian had not prepared a 2014 Form 5498 for this individual, the IRA custodian then would prepare an original 2014 Form 5498. If the IRA custodian had previously prepared a 2014 Form 5498 for this individual, the IRA custodian then would prepare a "corrected" 2014 Form 5498.

Continued on page 5

Under approach #2, the IRA custodian is furnished a contribution after April 15, the IRA custodian may choose to report it on that year's Form 5498 even though designated for a prior year. The amount of the contribution must be reported in box 13a and the year for which the contribution was made in box 13b and in box 13c the applicable code according to the IRS instructions.

If you report the contribution Form 5498 in a subsequent year, you must include the year for which the contribution was made, the amount of the contribution, and one of the following indicators:

A. Use "EO13239" for Afghanistan and those countries in direct support, including Djibouti, Jordan, Kyrgyzstan, Pakistan, Somalia, Syria, Tajikistan, Uzbekistan, Yemen, and the Philippines. For the Philippines only, personnel must be deployed in conjunction with Operation Enduring Freedom supporting military operations in the Afghanistan combat zone.

B. Use "EO12744" for the Arabian Peninsula, including air space and adjacent waters (the Persian Gulf, the Red Sea, the Gulf of Oman, the Gulf of Aden, the portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude, and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, the United Arab Emirates), and Jordan which is in direct support of the Arabian Peninsula.

C. Use "EO13119" or Public Law 106-21 "PL106-21" for the Federal Republic of Yugoslavia (Serbia and Montenegro), Albania, Kosovo, the Adriatic Sea, and the Ionian Sea north of the 39th parallel (Note: the combat zone designation for Montenegro and Kosovo (previously a province within Serbia) under Executive Order 13119 remains in force even though Montenegro and Kosovo became independent nations since EO13119 was signed).

Example. For a \$4,000 IRA contribution designated by a participant who served under EO 13239 for the tax year 2013, enter "4000" in box 13a, "2013" in box 13b, and "EO13239" in box 13c only. Make no entry in box 1 or box 10.

Definition. An individual who is serving in or in support of the Armed Forces in a designated combat zone or qualified hazardous duty area has an additional period after the normal contribution due date of April 15 to make IRA contributions for the prior year. The period of time is

the time the individual was in the designated zone or area plus at least 180 days.

15. **Box 14a. Repayments.** A traditional IRA account holder who has taken a distribution under special disaster rules or who has taken a qualified reservist distribution is eligible to repay the distribution even though such repayment does not qualify as a rollover. Enter the amount of the repayment(s).

Box 14a. Repayments

Enter the amount of any repayment of a qualified reservist distribution or of a designated disaster distribution (for example, a qualified disaster recovery assistance distribution).

Box 14b. Code

Enter QR for the repayment of a qualified reservist distribution, or DD for repayment of a federally designated disaster distribution.

Note that repayments only have one reporting procedure whereas postponed contributions have two reporting procedures.

16. **Box 15a. FMV of certain specified assets.** Completion of Boxes 15a and 15b are mandatory for 2016. If you are an IRA custodian or trustee with IRA assets of which the fair market values are not readily determinable, you should review the August 2013 newsletter.
17. **Duty To Prepare/Furnish Corrected Form 5498.** An IRA custodian is required to prepare a corrected Form 5498 as soon as possible after it learns there is an error on the original form as filed. The IRS furnishes the following example. "If you reported as rollover contributions in box 2, and you later discover that part of the contribution was not eligible to be rolled over and was, therefore, a regular contribution that should have been reported in box 1 (even if the amount exceeds the regular contribution limit), you must file a corrected Form 5498."

day, there will be no change in the filing deadline. However, the tax deadline is revised if April 16th falls on Saturday, Sunday or Monday.

If April 16th falls on a Saturday, Emancipation Day is recognized on Friday, April 15th. Since the tax filing deadline must be the next day after April 15th which is not a holiday, this will mean the deadline for most of the U.S. is revised to be Monday, April 18th. But see the discussion below for the impact of Patriot's Day.

If April 16th is Sunday, Emancipation Day is recognized on Monday, April 17th. Since the tax filing deadline must be the next day after a legal holiday, this will mean the deadline for most of the U.S. is revised to be Tuesday, April 18th. But see the discussion below for the impact of Patriot's Day. If April 16th is Monday, Emancipation Day is recognized on the 16th. April 15th will be on Sunday. Since the tax filing deadline must be the next day after April 15th which is not a holiday, this means the deadline for all of the U.S. would be Tuesday, April 17th unless Patriot's Day would revise it.

Patriot's Day is a legal holiday in the states of Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and the District of Columbia. It is observed on the third Monday in April. April 15, 2017 is the third Monday in April. Because there is an IRS Service Center located in Massachusetts which processes tax returns for those states and the District of Columbia, the IRS has in previous years ruled that such taxpayers are given an additional day to file their tax return. See IRS Notice 2006-23 and Notice 2011-17.

For 2017, Patriot's Day will be Monday April 17, 2017. For 2018, Patriot's Day will be Monday April 16, 2018. For 2019, Patriot's Day will be Monday April 15, 2019.

Understanding When Reason Code G Is to Be Used and When It Is Wrong to Use Code G

There are numerous terms used to describe the movement of IRA funds and pension funds - actual distributions, deemed distributions, direct rollovers, rollovers, non-reportable transfers and reportable transfers.

Although the IRS has issued some guidance, everyone would benefit if the IRS would issue more comprehensive guidance.

This article discusses direct rollovers and the use of reason code G on the Form 1099-R. The primary use of reason code G is when an individual's 401(k) funds are

directly rolled over to an IRA custodian for the benefit of an individual's traditional IRA. In a direct rollover the disbursement check issued by the 401(k) plan lists the IRA custodian as the check's payee for the benefit of a specified individual's traditional IRA. This check may look like a transfer check, but it is not since the 401(k) plan is not an IRA plan or vice versa.

Some tax accountants and some IRA personnel mistakenly believe that IRA funds are eligible to be directly rolled over to another IRA in the same way that 401(k) funds can be directly rolled over. And they believe that reason G is to be used to report this movement.

IRA funds are ineligible to be directly rolled over to another IRA so it would be improper to use reason G. By statutory definition there cannot be a direct rollover of IRA funds from one IRA to another IRA. A direct rollover requires that a pension plan (and not an IRA) makes a deemed distribution to an IRA or another pension plan. An actual distribution to an individual does not occur.

For example, Jane Doe instructs that she will have her vested 401(k) balance of \$40,000 directly rolled over into her traditional IRA with IRA custodian #1. The 401(k) plan will issue her a Form 1099-R with \$40,000 in box 1 (gross amount), 0.00 in box 2a (taxable amount) as there has been a rollover box 4 (withholding will have a 0.00 or be blank) and box 7 will have a reason code G (direct rollover). The IRA custodian will prepare a Form 5498 for Jane showing in box 2 that she made a rollover contribution of \$40,000.

The standard pension plan distribution rule is, if a person is eligible to directly rollover his or her vested account, but elects not to, the plan must withhold 20% of the distribution amount and will pay the individual 80%. That is, for the 20% mandatory withholding rule to not apply, the participant must elect to have a direct rollover. And most do. The mandatory 20% withholding rule does not apply to a distribution of IRA funds. The IRA rule is, the IRA custodian will withhold 10% of the distribution amount unless the individual instructs to have no withholding or to have more withheld.

How does one move IRA funds from one IRA to another IRA if he or she cannot do a direct rollover?

The first answer is, one moves the funds via a non-reportable transfer.

The IRS, for a long time, has authorized that funds may be transferred from one IRA to another IRA. In a

transfer, the disbursement check lists the IRA custodian as the payee. Transfers are non-reportable. In order to be considered a transfer, the movement of funds must be between the same type of plan (e.g. a QP-to-QP transfer, an IRA-to-IRA transfer, a 403(b)-to-403(b) transfer, a Roth IRA-to-Roth IRA transfer, etc.)

Concerning IRA-to-IRA transfers, the IRS' instructions state: **Transfers.** Generally, do not report transfers between trustees or issuers (unless they are direct rollovers from qualified plans) that involve no payment or distribution of funds to the participant, including a trustee-to-trustee transfer from one IRA to another (unless they are recharacterized IRA contributions or Roth IRA Conversions) or from one tax-sheltered (section 403(b)) arrangement to another.

An IRA custodian who sends a check to another IRA custodian in the format, "First Bank IRA custodian fbo Jane Doe," should do so only if a transfer form has been completed by the three parties involved.

The second answer is, the person takes an actual distribution and then makes a rollover contribution. Or, the person takes a deemed distribution (i.e. the check is made payable to IRA custodian #2 fbo of the individual's IRA) and then he or she makes a a rollover contribution. This approach assumes the individual satisfies the standard IRA rollover rules - any RMD is ineligible, 60 day rule and once per year rule.

The IRA custodian distributing the IRA funds is required to prepare a Form 1099-R using the name and social security number of the individual. The reason code to be used will be the standard codes 1 if the individual is under age 59½ and 7 if the individual is age 59½ or older. A long time ago the IRS had a code 2 to be used if a person had indicated that he or she intended to make a rollover contribution. The IRS changed its procedures by no longer using code 2 for this purpose since the IRS learned that many individuals may initially believe they will make a rollover contribution, but they never do. Reason code G is not to be used. The individual will need to complete lines 15a and 15b of his or her tax return to show the distribution is not taxable because he or she made a rollover contribution.

The IRA custodian receiving the IRA funds is required to report the rollover contribution in box 2 of Form 5498.

Set forth below is an excerpt from the IRS chart describing the use of reason code G.

Note that a direct rollover must come from a quali-

fied plan or other employer sponsored plan and NOT from an IRA. The deemed distributed funds may go into another qualified plan or an IRA.

Also note there is an explanation that a direct payment from an IRA (note not called a direct rollover) to an accepting employer plan may be coded as a G. Yes, it is confusing. But these IRA funds are going into an employer plan and not an IRA.

In summary, a direct rollover does not occur when funds are moved from one IRA to another IRA and using reason Code G on the Form 1099-R will subject the IRA custodian to being fined \$250 for preparing an incorrect Form 1099-R.

Administering HSAs for HSA Owners Age 65 and Older.

If someone remains employed and covered under their employer's health plan, an individual may well decide to not enroll in any Medicare program so he or she remains HSA eligible.

The general HSA tax rule is - a person enrolled in any Medicare program (A,B,C, or D) loses his or her ability to make an HSA contribution for the month of enrollment and all subsequent months.

Some HSA software has been written so that a person who attains age 65 will be set forth on an "an exceptions report."

Attaining age 65 and enrolling in a Medicare program are often two separate actions and being age 65 is no longer the same thing as being enrolled in Medicare. At one time for many individuals it was the same thing.

For many years after HSAs were first authorized in 2004 by the tax rules, the Social Security Department had a procedure where it would automatically enroll certain individuals in one or more Medicare programs. The Social Security Department no longer has such an automatic enrollment program.

Now, in order for a person to be enrolled in a Medicare program, he or she must affirmatively act to enroll. Upon enrolling, the person is no longer eligible to make HSA contributions for that month and all subsequent months.

Your bank as the HSA custodian may wish to inform your HSA owners who are 65 or older that they must discuss with their tax advisor whether or not they are still eligible to make an HSA contribution(s). To be eligible, one must not enroll in any Medicare program.

Some individuals who remain employed past age 65 will not choose to enroll in Medicare Part B, but will enroll in Medicare Part A as there is no cost to enroll in Part A. This makes the person HSA ineligible.

Email Consulting Guidance - HSA

Q-1 I have a question regarding an HSA account. A wife had an HSA and the banking center took the funds from the wife's HSA and transferred them to her husband's HSA and closed her's. How do we report this? Can we do an Internal transfer (non reported) for a spouse to spouse HSA like this or does the wife need to claim that money and we code as a regular distribution?

A-1 When did this happen? Unless there is a death or a divorce there are no tax rules permitting HSA funds of one spouse to be transferred to the other spouse. Some married individuals mistakenly think that there is such a right. Not under current law. The funds contributed to his HSA must be reported as a regular HSA contribution. The distribution to her since it was used for a non-medical reason will need to be included in her (their joint) income and she will owe the 20% penalty tax. If she is still within the 60 day time period and she has not used up her once per year rollover right, she could make a rollover contribution. She would need access to funds independent of what is in his HSA to make the rollover.

Q-2 I have a senior employee who will be retiring June 1st. He will be 65 years old 5-18-17. He was told he needs to get enrolled in Medicare as early as 90 days prior to this birthdate. I am trying to decide what he can/cannot contribute to his HSA this year and what the bank can/cannot contribute. Can you help me with that? He is telling me to plan that he enrolls in March so will I just count him as eligible for Jan and Feb?

A-2 Good morning. You are correct. If he enrolls in Medicare in March, he is only HSA eligible for 2 months. He is eligible for 2017 contributions of 1/6 the annual amount. This limit applies whether the bank makes the contribution or he does. If he would delay his enrollment until April his permissible contribution amount would be 25% of the applicable annual amount - \$4400 if single HDHP coverage and \$7750 if family HDHP coverage. If he would delay his enrollment until May his permissible contribution amount would be 33% of the applicable annual amount- \$4400 if single HDHP coverage and \$7750 if family HDHP coverage. Personally, with on-line registration I would think registering in April would work.

Q-3 If a HSA customer makes a previous year contribu-

tion anytime between January 1, 2017- April 17, 2017 that would be reported on the 2016 5498 SA in box 3. Next year, it would be reported again on the 2017-5498 SA in box 2 along with all contributions made in 2017, is that correct?

A-3 Yes.

Q-4 We have a client that opened an HSA in December of 2015. The client did a normal contribution of \$4000.00 in December of 2015. The client today is claiming that this was made in error and should have been made in January of 2016. Their tax adviser told them that they needed to get the HSA opened but must not have been specific on when to start contributing. At this point there anything we can do? Is it possible to switch the contribution to 2016 from 2015? The client did receive in January of 2016 a HSA status letter listing the 2015 contribution and also received a 5498 in May of 2016 for the 2015 Contribution.

A-4 He made the HSA contribution in December of 2014. All of us at one time or the other makes a mistake. He made a mistake. IRS reporting rules require that he (and his tax accountant) explain the mistake (and the correcting of the mistake) on his 2014 and 2015 tax returns. The bank is not directly involved in the correcting of this mistake even though the individual and the accountant may first think that the bank might or should be involved. The HSA tax rules like other tax rules are complicated and they do not allow the bank to treat the contribution as being made in 2015. The bank is required by IRS reporting rules to report the contribution was made in 2014 for 2014. Has he been sent a tax notice by the IRS? I assume he used this contribution for his 2015 HSA contribution. The tax rules do state any excess contribution in 2014 will be considered his 2015 HSA contribution assuming he is eligible and he otherwise did not make his 2015 contribution.

His accountant needs to make a written argument/explanation in order to try to get rid of his 2014 excess HSA contribution for purposes of the 6% excise tax. Based on how the law is written, the IRS is probably able to claim he owes the 6% excise tax for 2014 for the excess contribution. However, I would hope the IRS would be willing to waive the 6% tax for him. One may try to argue, there was a deemed distribution in early 2015 to resolve the excess contribution and the 6% tax should not apply.