The Pension Digest

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ALSO IN THIS ISSUE –

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

DOL/EBSA Proposes Extending Compliance/ Applicability Date For Fiduciary Rule and Related Exemptions From April 10, 2017 To June 9, 2017

The Trump administration is going to review whether or not the Fiduciary rule as created by the Obama administration should go into effect. On February 3, 2017, the President issued a memorandum directing the DOL/EBSA to examine the Fiduciary rules and the new and revised prohibited transaction exemptions to determine if such changes are not cost effective and may actually result in Americans having reduced access to retirement information, financial advice and investments.

The new definition of fiduciary was to go into effect as of April 10, 2017, as were various prohibited transaction exemptions.

The DOL/EBSA has formally issued a notice that it is proposing that the fiduciary applicability date be changed to be June 9, 2017, rather than April 10, 2017. Other applicability dates are also extended. This proposal is being published in the Federal Register on March 2, 2017, in order to allow the "new" DOL/EBSA to collect additional information and review it before the new Fiduciary rules go into effect and decide if changes in the Obama rules are warranted.

Comments on the subject of the proposed extension must be submitted by March 17, 2017 (a Friday). This is 15 days following its publication.

Comments on the subjects raised in the presidential memorandum must be submitted by April 17, 2017 (a Monday). This is 46 days following its publication as the 45th day is a Sunday and so the deadline is the following Monday.

Comment submissions must include the agency name (Department of Labor/Employee Benefits Security Administration) and the Regulatory Identification Number (RIN) of RIN 1210-AB79. Submitters are encouraged to use one of the electronic submission options rather than submitting a paper submission. These comments will be available to the public.

Comments may be submitted using one of the following methods.

1. Send an email to: EBSA.FiduciaryRule-Examination@dol.gov. In the subject line of your email include RIN 1210-AB79.
2. Go to the Federal eRulemaking portal and follow the instructions for submitting comments. The portal is located at: (http:/www.regulations.gov).
3. Mail your written comments to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW, WASHINGTON, DC 20210, Attention: Fiduciary Rule Examination.

The 15 day and 45 day submission deadlines will require an individual to act promptly. We expect there will be many comment submissions.

Help Your Elderly IRA Accountholders Designate an IRA Beneficiary(ies) and to Update Their Designations

The withdrawal period for an inherited IRA is much shorter when the estate is the beneficiary versus when a child or a grandchild is the beneficiary.

To illustrate, Helen Arborg died in

November of 2016. She was born in 1926. She had opened her IRA with First State Bank in 1979. She had always designated her two sons to be her beneficiaries, each to receive 50%. Mark was born in 1949 and John was born in 1952. The IRA's current balance is $80,000.

In July of 2016 she had transferred her IRA from First State Bank to a new IRA with Second National Bank. Second National Bank furnished Helen with a standard IRA plan agreement. Helen did not complete the designation of a beneficiary section. Her sons had visited Second National Bank and were told that their mother had properly established her IRA. She had withdrawn her 2016 RMD in October. The sons did not ask about the designation of beneficiaries topic.

The IRA plan agreement had a plan provision that her estate was her IRA beneficiary if she did not designate a beneficiary. The 2017 RMD divisor for the 2017 RMD calculation is 5.3. This is determined by using Helen's age and life expectancy in 2016 (88/6.3) and then 1.0 is subtracted to determine the 2017 divisor. This inherited IRA must be closed by December 31, 2022. Most likely the personal representative of the estate will not want to keep the estate open until 2022.

If Mark and John had been the designated beneficiaries the RMD divisors would have been 18.6 and 21.0. Obviously, the RMD is much larger when her estate is the beneficiary and more federal income taxes will paid much sooner.

When an IRA is transferred into your financial institution by someone over 70 1/2, the IRA custodian should be sure to assist your elderly customer with making the IRA beneficiary designations she or he wishes to make. In many cases this will be continuing the designations made at the prior IRA custodian. In most cases, there will be negative tax consequences if an estate is the default designated beneficiary.

GAO Recommends To IRS 3 Changes To Improve Its Guidance To IRA Owners About the Tax Risks Associated With Unconventional Investments

On December 8, 2016, the U.S. Government Accountability Office (GAO) sent a report to Senator Ron Wyden (D, OR.) the ranking member of the Senate Finance Committee. He had requested a study of unconventional investments in tax-favored retirement accounts. This article is limited to discussing IRAs and does not discuss retirement plans.

The GAO report discusses whether taxpayers properly understand the adverse tax consequences which may arise from IRAs being invested in unconventional investments and understand who must perform the investment and administrative duties associated with such unconventional investments. The two authors of this report are Charles A. Jeszeck, Director, Education, Workforce and Income Security and James R. McTigue, Jr., Director, Tax Issues, Strategic Issues.

This study was conducted from August 2016 through December 2016. The GAO believes the materials and evidence it obtained and reviewed provides a reasonable basis for its findings and conclusions.

One of the study's objectives was to gather some basic data on how prevalent were IRAs holding unconventional assets. The report sets forth a very limited amount of information. It does state that nearly 500,000 IRAs exist for 2015 comprised of an least one unconventional asset. Another description for unconventional assets is hard to value assets. Pursuant to the 2014 study of Form 5498, there were __________ . This means approximately 8% of IRAs have an unconventional investment.

The reason more comprehensive numbers were not determined is that the IRS has not yet generated any meaningful information. The GAO had to develop this information from various custodians, trustees and service providers. Although the IRS had issued guidance that IRA custodians commencing with the 2015 Form had to provide certain FMV information for hard to value assets, the IRS did not budget for creating the software to prepare various analytical reports. The IRS had said it would have such reports ready to analysis the 2016 Forms 5498 later in 2017. As of November 2016, the GAO had not been furnished any additional information about when the IRS believes it will be able to analyze the hard to value information as set forth in boxes 15a and 15b.

The GAO made three recommendations to the IRS to improve its guidance.

Recommendation 1:

Provide guidance to IRA owners on the potential for IRA transactions involving certain unconventional assets to generate unrelated business, taxable income subject to taxation in the current year and subsequent years. For example, IRS could consider adding an explicit caution in Publication 590, *Individual Retirement Arrangements (IRAs),* and include a link in Publication 590 to Publication 598, *Tax on Unrelated Business Income of Exempt Organizations,* to provide examples demonstrating how certain unconventional assets in IRAs can generate unrelated business income tax for account owners.

Recommendation 2:

Provide guidance to IRA owners and custodians on how to determine and document fair market value for certain categories of hard-to-value unconventional assets. For example, IRS could consider updating Form 5498 instructions to custodians on how to document FMV for hard-to-value assets (e.g., last-known FMV based on independent appraisal, acquisition price) and provide guidance directed at account owners that provides examples of how to ascertain FMV for different types of unconventional assets.

Recommendation 3:

Clarify the content of the model custodial agreement to distinguish what has been reviewed and approved by IRS and what has not. For example, IRS could consider: (1) restricting custodians from stating that the form has been "preapproved by the IRS" on the form; (2) adding language to specify which articles have been preapproved by the IRS and which have not; and (3) limiting custodians from adding provisions to the model form other than those preapproved by the IRS.

The IRS responded as follows to the GAO.

1. Text will be added to the 2017 version of Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs) informing IRA owners about the possibility of unrelated business taxable income (UBIT) if certain unconventional investments are purchased by his or her IRA.

It does not appear the IRS is willing to add sufficient additional text to explain well the adverse tax consequences which may arise on account of UBTI or unrelated debt-financed income (UDFI).

2. We (the IRS) acknowledge that furnishing guidance on the FMV topic would be helpful, but we are not ready to issue this guidance at the present time. The IRS has had on its priority guidance plan for some time the issuing of new "IRA" regulations. The regulations for Code sections 219, 408 and 408A would be revised. The IRS will be recommending to Treasury that the fair market value (FMV) topic is best addressed in these new regulations.

It may well be this approach will not be the approach adopted by the IRS under the Trump administration. This was the approach of the IRS under the Obama administration.

3. We (the IRS) agree to add text to Form 5305 and Form 5305-A to expressly state that the "pre-approved by IRS" statement only applies to the first seven articles. That is, only the first seven articles have been approved by the IRS.

The IRS did not discuss the GAO's suggestion that text be added limiting custodians from adding provisions to the forms other than those written by the IRS in the first seven articles.

The IRS understands that there must be other rules and procedures discussing topics not addressed in the first seven articles. The IRS understands it should not micromanage these other subjects.

Under an existing IRA regulation, an IRA custodian/trustee must furnish a complying IRA Disclosure Statement. It has been over 30 years since the IRS has made any attempt to determine if IRA custodians/trustees are in compliance. The goal sought by the GAO would be accomplished if the IRS would enforce its requirement that the IRA custodian/trustee furnish a complying IRA disclosure statement. Apparently, the IRS believes the use of its Publication 590-A and 590-B negates the need to furnish a complying IRA disclosure statement. The IRS is wrong. The IRA Disclosure Statement at times must be more comprehensive than the IRS publications. This is certainly true if there will be unconventional assets.

Email Consulting Guidance-IRAs Inherited IRAs

Q-1 Can you please advise on the examples I listed below?
Customer was over 70.5 when he inherited his mother's IRA. What is the factor we use to determine the RMD, is it Single or Uniform? Thank you.

A-1 In what year did mom die? The fact that a beneficiary attains age 70 1/2 is irrelevant in determining the RMD for a beneficiary for a given year. For the year during which the IRA dies, the beneficiary is required to withdraw that RMD amount to the extent not distributed prior to his or her death. Starting with the first year following the death of the IRA owner, the beneficiary is required under the life distribution rules to take an RMD for such year and all subsequent years. The RMD formula to be used is- balance as of 12-31 of preceding year divided by advisor to come from the single life table using the age 0 the beneficiary as of such year Example, mom died in 2015 at age 76. Mary her daughter was her IRA beneficiary. Mary’s date of birth is 9-10-1962. She is age 54 in 2016. The divisor from the single life table is 30.5. Her 2016 RMD is 12-31-15 balance divided by 30.5. Her 2017 RMD will be the 12-31-16 balance divided by 29.5. The RMD calculation does not change when a beneficiary reaches age 70 1/2.

Q-2 I have a gentlemen that closed out his deceased wife's ROTH IRA. I'm putting on the 1099R and want to make sure I'm filling it out correctly. Please check out the screen shot and let me know if it is correct or what I need to change.

A-2 The reason code is a "Q" if the wife/husband have met the 5 year Roth IRA requirement. Code “4” is used to report death distribution(s) with respect to a traditional IRA, SEP IRA or SIMPLE IRA.

Q-3 I see that the managed IRA account form is titled "IRA-Trust Account." Why is "trust" in the title? I was thinking it would be something like a "Managed IRA" or "Agency IRA" title.

A-3 CWF has 3 IRA agreement forms. Federal law requires that an approved financial institution serve as the IRA trustee or the IRA custodian for an IRA. We have 3 forms to handle the 3 different IRA investment situations.

Our #40 form authorizes a bank to offer IRA investments which are limited to the savings and time deposit instruments as sponsored or offered by that bank. It is best when this form is used by an institution without trust powers. Some institutions with trust powers will use this form for IRAs set up on the retail side of the bank.

Our #42 form authorizes a bank without trust powers to offer IRA investments in additional to the savings and time deposit instruments as sponsored or offered by that bank. The additional investments most often made available would be mutual funds. This is the custodial self-directed form. The bank must establish a good accounting system for these "other" investments and cannot render any investment advice. It is best when this form is used by an institution without trust powers. Some institutions with trust powers will use this form for certain self-directed IRAs.

Our #41 form is a trust form. It defines the duties and rights of the trustee and the IRA account holder. The IRA can either be managed by the trustee or self-directed by the individual. The account holder can assume the responsibility for making the investment decisions or can instruct the trustee to hire a certain person to perform these duties.

Q-4 I want to verify that I am using the correct code on the 1099R form for a 401k payout. The participant did a hardship distribution to pay for funeral expenses. She is 24 years old. I would still use a code 1 in box 7 for a premature distribution even though this was taken from the 401k as a hardship, correct?

A-4 Yes. For purposes of the 10% tax, a hardship is not an exception. It is an exception for purposes of being able to get a distribution while still employed.

Q-5 I have a customer who is considering a Direct Rollover of his Traditional IRA funds to PSRS (Public School Retirement System of MO). He asked if he could also rollover the funds in his Inherited IRA (from his father) and I told him that he could not. Is that the correct answer?

A-5 Yes, your answer is correct.

The Pension Digest

The IRS Loses a Big Roth IRA Case

On February 16, 2017, the U.S. Court of Appeals for the Sixth Circuit ruled in Summa Holdings, Inc. v. Commissioner of Internal Revenue that two taxpayers were permitted to have corporate DISC dividends paid to a Roth IRA and that such dividend payments were not disguised impermissible Roth IRA contributions. The Tax Court's earlier decision adopting the IRS' position was reversed.

Background. Summa Holdings is the parent corporation of a group of companies that manufacture a variety of industrial products. Summa Holding has two primary shareholders, a father owning 23.18% of the shares and a trust for the two sons owning 76.05% of the shares. The father and his wife are the trustees of the trust.

In 2001 each son had established his own Roth IRA by each contributing $3500. Soon after establishing their Roth IRAs both individuals had their Roth IRAs purchase 1,500 shares of stock in JC Export, a newly formed DISC. In order to avoid certain tax-reporting and shareholder obligations which would exist if the Roth IRAs owned directly the stock of JC Export, the two individuals instructed the Roth IRA custodian to set up a second corporation, JC Holding, which purchased the 3,000 shares of JC Export. JC Holding was the sole owner of JC Export. The two Roth IRAs each owned a 50% share of JC Holding.

The Internal Revenue Code has been written to create tax incentives for companies to export their products. An exporter such as Summa Holdings is able to claim a tax deduction for the commissions it pays the DISC within certain limits. The DISC is not required to include these commissions in its income (within certain limits) and is allowed to hold onto such commissions indefinitely. The DISC is allowed to distribute these nontaxed earnings as dividends to its shareholders. Often the same individuals or entities will be shareholders of both the DISC and the export company. The net tax effect is that income is not taxed at the corporate level, but it will be taxed at the shareholder level.

Summa Holdings had a sales agreement with JC Export under which it paid commissions to JC Export which in turn distributed these funds as a dividend to JC Holding. Each Roth IRA received 50% of such dividends as JC Holding was the sole owner of JC Export.

The Internal Revenue Code expressly provides that corporations and other entities, including IRAs may own shares of a DISC.

A corporation which owns DISC shares and receives dividend income must pay corporate income tax on its dividends. At one time the law permitted IRAs and other tax-exempt entities to not include such dividends in their income, but the law was changed in 1989 to require an IRA and other tax-exempt entities to pay an unrelated business income tax on such dividends at the same rate as the corporate income tax.

This 1989 law change certainly made it less attractive for a traditional IRA to own shares in a DISC since it had to pay a high tax rate when the dividends were received by the traditional IRA and then the standard taxation rules applied when the funds were distributed from the traditional IRA.

The 1989 law change does not have the same negative impact on a Roth IRA. Remember the Roth IRAs did not exist in 1989 as 1998 was the first year for which a person could make a Roth IRA contribution.

Yes, a Roth IRA is required to pay the unrelated business income tax (33%) when it receives the dividends from the DISC, but once paid there will be no further taxation on any "qualified distribution" of the dividends or future earnings derived from reinvesting the dividends.

From 2002-2008, $5,182,314 was transferred from Summa Holdings to the two Roth IRAs. $1,477,028 was transferred in 2008. At the end of 2008 each Roth IRA had a FMV of more than $3 million.

In 2012, the IRS informed the various parties that with respect to the 2008 tax year (other years were closed) that it was assessing tax deficiency notices.

The IRS informed the parties that notwithstanding the text of the Internal Revenue Code that the IRS had the authority to reclassify the dividends paid to JC Export as income to the two shareholders of Summa Holdings and not dividends which were paid to the Roth IRAs. Consequently, the IRS disallowed Summa Holdings from being able to claim a deduction for tax year 2008 for the DISC commissions it had paid. JC Holding obtained a refund for the corporate income tax (UBIT) it had paid on its dividends it had been paid by JC Export. The commissions became dividends to the father and the trust proportionately.

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Preliminary Tax Data – IRA/Pension Statistics for 2015

The IRS has recently issued preliminary tax data for tax year 2015. These statistics are preliminary statistics in the sense they were devised by an IRS economist using a sample of tax returns to make estimates. The number of filed returns increased from 148.7 million to 150.7 million. Taxable income increased to $7.3 trillion from $6.9 trillion. Total tax liability increased to $1.5 trillion. An increase of 8%. The amount of funds being withdrawn from pension plans increased to $701 billion from $675 billion. The amount of IRA distributions increased to $250 billion in 2015 from $234.1 billion for 2014. The amount being contributed to pension plans and IRAs changed as discussed below.

Note that 954,504 self-employed individuals contributed 22.2 billion to their profit sharing, SEP and SIMPLE plans, whereas 2.75 million IRA accountholders contributed 13.44 billion to their traditional IRA.

CHART A — SEP/SIMPLE/Profit Sharing Chart

Year	Contribution Amount	Number of Contributors	Average Contribution
2003	$16.9 billion	1.19 million	$14,202
2004	$18.0 billion	1.17 million	$15,385
2005	$19.4 billion	1.20 million	$16,202
2006	$20.2 billion	1.18 million	$17,200
2007	$20.1 billion	1.14 million	$17,720
2008	$18.5 billion	.97 million	$19,072
2009	$17.5 billion	.88 million	$19,780
2010	$17.2 billion	.87 million	$19,776
2011	$17.6 billion	.87 million	$20,256
2012	$19.2 billion	.88 million	$21,843
2013	$20.2 billion	.90 million	$22,364
2014	$20.8 billion	.93 million	$22,438
2015	$22.2 billion	.95 million	$23,234

CHART B — Traditional IRA Chart

Year	Contribution Amount	Number of Contributors	Average Contribution
2003	$10.16 billion	3.46 million	$2,936
2004	$10.20 billion	3.38 million	$3,018
2005	$12.21 billion	3.29 million	$3,707
2006	$12.77 billion	3.29 million	$3,885
2007	$13.19 billion	3.37 million	$3,914
2008	$11.91 billion	2.78 million	$4,284
2009	$11.49 billion	2.64 million	$4,358
2010	$11.71 billion	2.63 million	$4,449
2011	$11.26 billion	2.62 million	$4,302
2012	$12.05 billion	2.61 million	$4,608
2013	$13.30 billion	2.77 million	$4,797
2014	$13.44 billion	2.75 million	$4,896
2015	$13.25 billion	2.67 million	$4,960

Deductible Traditional IRA Contributions

The number of tax returns claiming a deduction for a traditional IRA contribution decreased by 2.7%.

The amount contributed to traditional IRAs decreased to 13.25 billion from 13.44 billion. This was a 1.40% decrease.

What was the AGI of those who made traditional IRA contributions for 2015?

	Under $15,000	$15,001 to $29,999	$30,000 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 Or more	Total
Number of Returns	92,053	280,820	493,941	939,018	636,743	169,222	2,671,897
% of Total Returns	3.45%	10.51%	18.49%	35.14%	26.08%	6.33%	100%
Contribution Amt. **(in thousands)**	$268,156	$957,510	$1,807,531	$4,619,359	$3,964,549	$1,635,945	$13,253,050
% of Total Contr.	2.02%	7.22%	13.64%	34.86%	29.92%	12.34%	100%
Avg. Contr. Amt.	$2,913	$3,410	$3,659	$4,919	$5,690	$9,661	$4,960

CWF Observations

1. The average IRA contribution, per return, was $4,960 for 2015.
2. 34.86% of all IRA contributions came from individuals with AGI between $50,000-$99,999.
3. 77.12% of all IRA contributions for 2015 came from individuals with AGI of $50,000 or More.

IRA and SEP/SIMPLE/Keogh Deductible Contributions

1. The number of tax returns claiming a deduction for a self-employed person's contributions to a profit sharing, SEP or SIMPLE increased to .95 million from .93 million.
2. The amount contributed by self-employed individuals to a profit sharing plan, SEP or SIMPLE increased to 22.2 billion from 20.8 billion. A 3.0% increase.

What was the adjusted gross income (AGI) of those who made SEP/SIMPLE/Keogh contributions?

	Under $15,000	$15,001 to $29,999	$30,000 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 Or more	Total
Number of Returns	10,401	10,947	36,126	145,829	289,711	461,489	954,504
% of Total Returns	1.09%	1.15%	3.78%	15.28%	30.35%	48.35%	100%
Contribution Amt. **(in thousands)**	$91,294	$60,288	$214,372	$1,406,561	$4,871,373	$15,533,013	$22,176,881
% of Total Contr.	.41%	.27%	.97%	6.34%	21.97%	70.04%	100%
Avg. Contr. Amt.	$8,777	$5,505	$5,934	$9,645	$16,815	$33,658	$23,234

CWF Observations on SEP/SIMPLE/Keogh Contributions for 2015

1. The average contribution per return is $23,234 for 2015.
2. 70.04% of contributions ($15.5 billion) come from individuals with AGI of $200,000 or more.
3. 92.01% of contributions (18.7 billion) come from individuals with AGI of more than $100,000.
4. The average contribution is $33,658.

Taxable IRA Distributions for 2015

(Based on AGI)

	Under $15,000	$15,001 to $29,999	$30,000 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 Or more	Total
Number of Returns	1,785,130	1,857,792	2,082,624	4,317,674	3,006,907	1,151,039	14,201,166
% of Total Returns	12.57%	13.08%	14.69%	30.40%	21.18%	8.10%	100%
Distribution Amt. **(in thousands)**	$10,016,608	$14,671,701	$21,463,196	$67,931,506	$79,704,642	$56,895,893	$250,683,526
% of Total Distrib.	4.00%	5.85%	8.56%	27.10%	31.79%	22.70%	100%
Avg. Distrib. Amt.	$5,611	$7,822	$10,306	$46,733	$26,507	$49,430	$17,652

CWF Observations

1. 14.20 million returns reported a taxable IRA distribution.
2. There were taxable IRA distributions of 250.7 billion.
3. The average distribution was $17,652.
4. As one would expect, the average distribution was larger for those with higher incomes.

Pension Distributions for 2015

(Based on AGI)

	Under $15,000	$15,001 to $29,999	$30,000 to $49,999	$50,000 to $99,999	$100,000 to $199,999	$200,000 Or more	Total
Number of Returns	3,821,837	4,384,873	4,661,035	8,460,832	5,467,178	1,607,392	28,403,147
% of Total Returns	13.46%	15.44%	16.41%	29.79%	19.25%	5.65%	100%
Distribution Amt. **(in thousands)**	$26,285,668	$55,588,708	$82,577,573	$226,410,741	$221,172,568	$88,780,131	$700,815,387
% of Total Distrib.	3.75%	7.93%	11.78%	32.31%	31.56%	12.67%	100%
Avg. Distrib. Amt.	$6,878	$12,677	$17,717	$26,760	$40,455	$55,232	$24,674

Observations

1. 28.4 million returns reported a taxable pension distribution.
2. There were taxable pension distributions of 700.8 billion.
3. The average distribution was $24,674.
4. As one would expect, the average distribution was larger for those with higher incomes.
5. 76.54% of the taxable distributions ($536 billion) arose from those returns showing AGI of $50,000 or more.

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What about $1,477,028 which had gone into the two Roth IRAs?

The IRS' position was - the $1,477,028 paid as a dividend to the two Roth IRAs did not qualify as "Roth earnings" but in reality was an impermissible excess Roth IRA contribution. The IRS assessed the 6% excise tax for making an excess contribution and also assessed a penalty tax of $56,182 under the accuracy related tax provisions.

The Tax Court ruled for the IRS on the reclassification issue, but did not adopt the IRS position on the tax accuracy subject.

The U.S. Court of Appeals for the Sixth Circuit reversed the United State Tax Court and ruled that the taxpayers had the right under the Internal Revenue Code to adopt the tax structures they adopted and implemented. Quoting from page 12, "The best way to effectuate Congress's nuanced policy judgments is to apply each provision as its text requires - not to elevate purpose over text when taxpayers structure their transactions in unanticipated tax-reducing ways."

"The Code authorizes DISC commissions and dividends, regardless of whether they have economic substance, in order to reduce the tax burden of exporters. And the Code authorizes investors to avoid significant taxes on capital gains and dividends by using their Roth IRAs in all manner of tax-avoiding ways, including by buying shares in promising new companies whose share prices may rise considerably over time or which may pay out large dividends over time."

"The Commissioner cannot fault taxpayers for making the most of the tax minimizing opportunities Congress created."

"If Congress sees DISC-Roth IRA transactions of this sort as unwise or as creating an improper loophole, it should fix the problem."

In summary, in this decision the 6th Circuit is informing the IRS that the statutory text is extremely important and must control. Congress has created express tax benefits for DISC and Roth IRAs with the intent that a party who complies with the law will receive the promised tax benefits. The IRS will not normally prevail by arguing that it has an inherent right to reclassify transactions in a way which maximizes revenues for the U.S. government.