THE Pension Digest

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ALSO IN THIS ISSUE –

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

CWF's Primer on IRA Rollover Rules

There are seven (7) IRA rollover rules:

1. An RMD is never eligible to be rolled over.
2. A person is authorized to rollover only one distribution within a 12 month period,
3. The rollover must be completed within 60 days.
4. An inherited IRA (non-spouse beneficiary) is never eligible to roll over a distribution from an inherited IRA:
5. If property is distributed (and not cash), such property must be a rollover. The property cannot be sold and the proceeds rollover over as is the case when property is distributed from a qualified plan.
6. SIMPLE IRA funds may be rolled over into a traditional IRA, SEP-IRA or a 401(k) or vice versa only if the individual has met the 2 year requirement.
7. Roth IRA funds can only be rolled over into the same or a different Roth IRA.

A person who fails to comply with all of the above 7 rules is ineligible to make a rollover contribution.

The IRS has been granted the authority by a 2001 tax law to grant relief to someone who has missed the 60 day rule because he or she incurred some difficulty or hardship and it would be unjust, or inequitable for the IRS to not waive the 60 day rule. Waive means the IRS creates a new 60 day period for the individual to complete the rollover.

The IRS' position is - it does not have the statutory authority to grant rollover relief to a person who fails to comply with any of the other rollover rules.

The IRS can't grant relief to any person who has taken multiple IRA distributions during a twelve month and makes an ineligible rollover contribution.

The IRS can't grant relief to a nonspouse beneficiary who was paid a distribution by an IRA trustee.

The IRS can't grant relief and allow someone to roll over a required distribution.

The IRS can't grant relief if a person receives an in-kind distribution from his or her IRA, sells the asset, and then impermissibly rolls over the sales proceeds. If a distribution is ineligible to be rolled over but it is contributed as a rollover, such distribution will need to be included in the individual's taxable income and it will be an excess contribution subject to the excess contribution rules until corrected by withdrawal.

IRS Guidance on the One Rollover Per Year Rule

A person generally cannot make more than one rollover from the same IRA within a 1-year period. A person also cannot make a rollover during this 1-year period from the IRA to which the distribution was rolled over.

Beginning after January 1, 2015, one can make only one rollover from an IRA to another (or the same) IRA in any 12-month period, regardless of the number of IRAs one owns.

The one-per year limit does not apply to:

- rollovers from traditional IRAs to Roth IRAs (conversions)
- trustee-to-trustee transfers to another IRA
- IRA-to-plan rollovers

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• plan-to-IRA rollovers
• plan-to-plan rollovers

Once this rule takes effect, the tax consequences are:

• one must include in gross income any previously untaxed amounts distributed from an IRA if you made an IRA-to-IRA rollover (other than a rollover from a traditional IRA to a Roth IRA) in the preceding 12 months, and
• one may be subject to the 10% early withdrawal tax on the amount you include in gross income.

SEP-IRA Email Guidance

One person businesses and other small employers like to receive the tax benefits associated with establishing a retirement plan. Establishing a SEP-IRA plan and a SEP-IRA allows a business/person to receive large tax benefits with only minimal compliance duties and costs.

Often many individuals and businesses do not understand how simple it is to establish a SEP-IRA plan and a SEP-IRA. Brochures and articles may be used to assist your customers.

Financial institutions like SEP-IRAs as a business customer may make a contribution up to $53,000 for 2016 and $54,000 for 2017. Contributions in the range of $20,000 - $35,000 are quite common.

Banks and other financial institutions do not need to fear working with SEP-IRA questions as the account relationship can be structured to limit the tasks to be performed by the IRA custodian (SEP-IRA custodian). In general, the IRA custodian performs its standard IRA tasks, but labels the account a SEP-IRA, checks the SEP box in box 7 of Form 5498 and reports SEP-IRA contributions in box 8 on the Form 5498.

As with any tax-preferred account, there are times your customer must discuss their tax questions with their tax adviser. Set forth below are 4 email situations dealing with SEP questions/situations.

Question/Situation #1

Can we request a SEP IRA from another financial institution and put in a Traditional IRA at BABA?

CWF's Response #1

Yes, funds may be transferred from a SEP-IRA into a standard traditional IRA. See CWF Form 56.

Note that CWF's IRA Transfer Form was revised in June of 2016. This form handles SEP-IRA funds being transferred into another SEP-IRA, a SIMPLE-IRA if the 2 year rule has been met, or a traditional IRA or vice versa.

Question/Situation #2

Is it permissible to make SEP contributions to a Traditional IRA? We have a client who has a Traditional IRA and recently opened a SEP IRA. The Relationship Administrator wanted to know if the SEP IRA was really necessary or if she should have suggested the SEP contribution could have been made to the Traditional IRA.

CWF's Response #2

A SEP IRA is a traditional IRA to which there has been a SEP IRA plan contribution.

The standard traditional IRA plan agreement has been written by the IRS so that the following types of contributions may be made - a SEP contribution (from an employer including a one person business), an annual traditional IRA contribution, a rollover contribution, a transfer contribution, or a recharacterized contribution. The SEP contribution is reported in box 8 of the Form 5498 whereas the annual traditional IRA contribution is reported in box 1 of the Form 5498.

Some institutions choose to not allow both types of contributions to the same IRA document and administratively require there to be separate IRA plan agreements.

But the tax rules do not require this. Both of these contribution types may be made to the same traditional IRA which is now called a SEP-IRA.

Most self-employed individuals do not make both a SEP contribution and also an annual traditional IRA contribution, but there will be some who will make both types contributions.

And some individuals who receive a SEP contribution from their employer will also wish to make an annual traditional IRA contribution.

Question/Situation #3

We have a customer that opened a SEP-IRA and provided us with a copy of 5305. Is this acceptable? See attached please. I also attached a copy that we normally have the customer fill out. Your help is appreciated.

CWF's Response #3

How many IRA plan agreements (Form 5305-A) are there? One or Two.

There must be a separate Form 5498 for each IRA plan agreement.

It there is only one plan agreement, but two different time deposit accounts (one traditional and one SEP), this IRA should be called a SEP-IRA. Boxes 1 and/or 8

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should be completed when applicable.

In order to have a valid SEP-IRA plan, the employer must complete and sign the Form 5305-SEP and each eligible employee must establish his/her own SEP-IRA (Form 5305-A or Form 5305).

It is the employer who completes and signs the Form 5305-SEP. I understand the employer is Asia Lee. She has completed the Form 5305-SEP. She does not need to complete a second version of this same form.

A SEP-IRA is a traditional IRA (Form 5305-A) to which an employer has made a SEP-IRA contribution.
Her SEP-IRA contribution must be made into a SEP-IRA. I was not sent any additional form or document showing that she has a SEP-IRA.

See attached. Wolters Kluwer, CWF and other vendors have IRA plan agreement forms incorporating the Form 5305-A.

The SEP-IRA contribution can either made to an already existing IRA (Form 5305-A) or it may be made to a new IRA (Form 5305-A). Asia and a bank representative must sign the Form 5305-A.

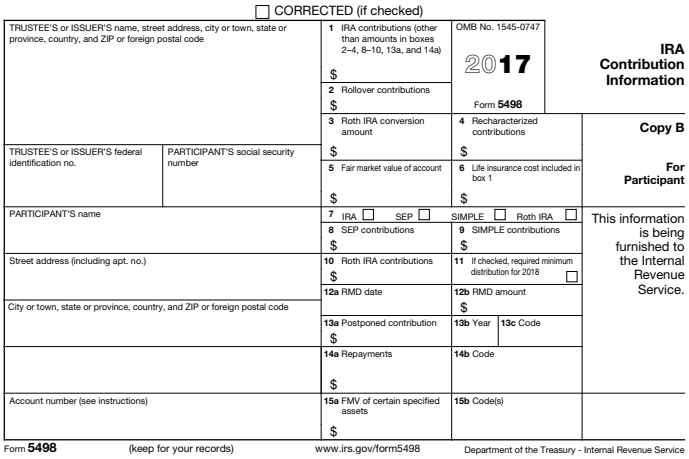
Additional SEP-IRA Discussion

In order to have a SEP IRA plan the employer must establish the SEP plan document (Form 5305-SEP) and each eligible employee must establish his/her SEP IRA (Form 5305-A). When there is a one person business, the individual signs the Form 5305-SEP as the employer and then he/she signs the Form 5305-A as the employee.

In order to have a SEP IRA plan there must be a qualifying business. Whether or not certain activities mount to "being in business" is a legal/tax question which is the responsibility of the individual/business and advisers and is not generally the bank's responsibility.

I understand an individual has contacted the bank because he or she wishes to establish a SEP-IRA. This individual is the trustee of a trust and I presume is entitled to be compensated from trust assets for his or her services. The individual must act on the advice of his/her tax advisor as whether or not his/her activity is sufficient to support the establishment of a SEP IRA plan, The IRS might well argue that serving as the trustee for one personal trust is not sufficient to being in the business of serving as a trustee. How will the individual be reporting this income on his/her tax return? Will the income be self employment income subject to self-employment taxes?

What is the amount of compensation anticipated to be received each year? If the individual concludes he/she is eligible to establish the SEP-IRA plan and SEP-IRA, it would be good that the individual acknowledge that he/she will not look to the bank for assistance with any IRS tax penalties if the IRS would conclude otherwise.



☐ 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 For Participant
	5 Fair market value of account $	6 Life insurance cost included in box 1 $	
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

Understanding What Forms Are Needed to Establish a SIMPLE IRA Plan And a SIMPLE IRA

In order to establish its SIMPLE IRA plan, a sponsoring employer must execute either the IRS Model Form 5304-SIMPLE or the Form 5305-SIMPLE.

Each eligible employee must establish his/her own SIMPLE IRA to receive elective deferrals and the employer's matching or non-elective contribution. The IRS has two model forms for this - a Form 5305-S (trust) and a Form 5305-SA (custodial).

CWF Form 941 uses/incorporates Form 5305-S. CWF Forms 940 and 942 use/incorporates the custodial version, Form 5305-SA.

These two forms do not discuss or reference what form the employer completed in order to establish its SIMPLE IRA plan. These forms authorize the trustee or the custo-

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dian to accept contributions made on behalf of a participant under the employer's SIMPLE IRA plan.

Some IRA representatives are confused because the IRS does not have a 5304 version for an individual to establish his/her SIMPLE IRA.

One can see a person thinking the IRS might have another 5304 SIMPLE IRA form to be used by the individual, but this form has not been written by the IRS as the IRS does not think it is needed.

RMD Rules for 401(k) Plans and Their Impact on Direct Rollovers and Rollovers Into IRAs.

The tax laws expressly state that a required distribution is ineligible to be rolled over (or directly rolled over). IRAs have the rule that any person who is age 70 1/2 or older during the current year must take an RMD for that year. The law defines any distribution occurring during such year as a required distribution until 100% of the required distribution has been taken.

As discussed below in our email guidance, there can be a special required distribution rule for 401(k) plans. This is determined by the business sponsor when it establishes the 401(k) plan. The 401(k) plan may be written to state that any employee who is not a 5% owner has a required beginning date of April 1st of the year following their separation from service rather than the year one attains age 70 1/2.

Note this special rule does not apply to a person who is a 5% owner.

Also note that if a person age 74 separates from service in April of 2017 and wishes in May to directly rollover his 401(k) funds into an IRA, then he will not be able to rollover 100% of his 401(k) account. His separation from service in 2017 means he now has the duty to take an RMD for 2017. His deadline is April 1, 2018. However, if he wishes to take a distribution in 2017 (do a direct rollover), his 2017 RMD must be paid to him first and the remainder may be directly rolled over. Sometimes 401(k) administrators do not comply with this rule. It is best if an IRA custodian can inform the individual to make sure the 401(k) administrator pays him his RMD and the remaining amount can be directly rolled over.

Email Question/Situation.

We have an employee who works here at the bank who turned 70 on 9/10/46 and working full time. He has a pension account through the bank and IRA's. When he checked with our pension company they informed him that since he is still working fulltime he would not need to take a distribution this year and would only have to take one distribution next year. Do you agree with this?

I thought that if he chose to wait until April 2018 to take his 70 1/2 distribution he would also need to take his 71 year distribution in 2018. Please advise me on whether you agree or disagree and why?

CWF's Guidance.

You do not indicate when he is going to retire. For discussion purposes, I am assuming the pension plan has been written to use the special RMD rule when an employee is not a 5% owner.

Will he retire in 2017 or 2018 or will he continue to work for a number of years? Since he is not a 5% owner, his first RMD year will be the year he retires and not the year he attains age 70 1/2.

If he retires in 2017, he will need to take an RMD for 2017 by April 1, 2018. But if he wishes to move his pension funds into his IRA in 2018, his 2018 RMD must be paid to him before he is eligible to directly roll over the remainder.

RMD laws for IRAs (traditional, SEP and SIMPLE) may be different than those applying to a pension plan.

A pension plan will generally be written to follow/adopt one of two RMD approaches.

Under the first approach any participant attaining 70 1/2 during the year is required to take an RMD for 2017 and his/her required beginning date is April 1, 2018. This is the standard IRA approach.

Under the second approach, any pension participant participant who is not a 5% owner has a retired beginning date of April 1st after the year he or she separates from service. The year one attains age 70 1/2 no longer governs. For example, Sara (a non-5% owner) retires in 2018. She will have to take an RMD for 2018 and her required beginning date is 4/1/19.

Under the first approach, any participant who is a 5% owner must in essence comply with the IRA rule. He or she has a required beginning date of April 1st after the year he or she attains age 70 1/2.

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IRS Guidance - Transfers Incident To Divorce

Administering IRAs can be complex because the are many types of transfers. An IRA administrator must determine the type of transfer which is occurring and then obtain the necessary forms so that IRS reporting may be prepared correctly if the transfer must be reported to the IRS and the individual.

On page 28 of IRS Publication 590-A the IRS provides the following guidance.

"**Transfers Incident To Divorce**

If an interest in a traditional IRA is transferred from your spouse or former spouse to you by a divorce or separate maintenance decree or a written document related to such a decree, the interest in the IRA, starting from the date of the transfer, is treated as your IRA. The transfer is tax free. For information about transfers of interests in employer plans, see Distributions under divorce or similar preceedings (alternate payees) under Rollover From Employer's Plan Into an IRA, earlier.

Transfer methods. There are two commonly used methods of transferring IRA assets to a spouse or former spouse. The methods are:

- Changing the name on the IRA, and
- Making a direct transfer of IRA assets.

Changing the name on the IRA. If all the assets are to be transferred, you can make the transfer by changing the name on the IRA from your name to the name of your spouse or former spouse.

Direct transfer. Under this method, you direct the trustee of the traditional IRA to transfer the affected assets directly to the trustee of a new or existing traditional IRA. set up in the name of your spouse or former spouse. If your spouse or former spouse is allowed to keep his or her portion of the IRA assets in your existing IRA, you can direct the trustee to transfer the assets you are permitted to keep directly to a new or existing traditional IRA set up in your name. The name on the IRA containing your spouse's or former spouse's portion of the assets would then be changed to show his or her ownership. If the transfer results in a change in the basis of the traditional IRA of either spouse, both spouses must file Form 8606 and follow the directions in the instructions for that form."

Here is our discussion of this guidance and our suggestions for changes to improve this guidance.

1. IRA funds may be transferred from the traditional IRA of a person's spouse or former spouse into his or her IRA. This transfer is tax free.

The transfer must be made pursuant to a court order or a separate maintenance agreement. It is not stated expressly, but the IRA industry understands that tax free means a Form 1099-R need not be prepared.

2. The IRS cross-references that there are different rules applying if 401(k) funds would be transferred from your spouse's or former spouse's 401(k) plan into your IRA.

3. As with many areas of the IRA publications, the IRS has not updated its discussion to discuss all four types of IRAs. The discussion on page 28 is limited to discussing divorce and traditional IRAs. It should be revised to discuss Roth IRAs, SEP-IRAs and SIMPLE-IRAs.

4. There is a caution set forth. If the divorced spouse who has to transfer some or all of his/her IRA assets has basis within his/her IRA prior to the transfer, both spouses will be required to file their own Form 8606 to reflect the change in their respective basis.

5. The IRS indicates there are two commonly used methods of transferring IRA assets to a spouse or a former spouse. The IRS does NOT state these are the only methods for transferring such assets.

6. The IRS indicates the name on the IRA may be changed. This is method #1 for transferring IRA funds between divorced spouses.

This IRS guidance is problematic. Does the IRA custodian need to furnish the "new" owner a copy of the IRA plan agreement and is the new owner required to designate his or her own beneficiaries? It makes no sense that the beneficiaries designated by the former spouse would apply to the other spouse.

7. The IRS indicates that method #2 for transferring IRA funds between divorced spouses is to have a direct transfer. The IRS discussion states that an individual has the right to direct his/her IRA custodian to transfer the Involved IRA assets to the IRA custodian holding a new or an existing IRA set up for the other spouse or ex-spouse. The IRA plan agreement might not contain such authority. It should be reviewed prior to any such transfer.

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8. The IRS also discusses the following special situation - the court order directs that the former spouse is allowed to keep his or her portion in the other spouse's IRA. There must have been a state court decision which adopted this approach. One would have thought that the IRS would have informed the individuals and the court that an IRA can only have one "owner." This situation most likely is a prohibited transaction and he parties should be informed of this fact so that it could be structured differently.

The IRS should update the discussion of transfers incident to a divorce. Roth IRAs, SEP-IRAs and SIMPLE-IRAs should be discussed.

Request to Move IRA Funds Into the Federal Thrift Savings Plan

A federal government employee has the opportunity to save for retirement by participating in the Thrift Savings Plan (TSP). The TSP is similar to the 401(k) plans set up by many private employers.

A federal employee covered by the Federal Employees Retirement System (FERS) has the right to make elective deferral contributions and rollover contributions to the TSP. An employee hired after July 31, 2010, will automatically be enrolled to have 3% of his/her basic pay deducted from each paycheck unless he/she instructs otherwise. The government makes a matching contribution up to 3% of compensation and the government also contributes 1% of an employee's pay.

Rollovers from IRAs and private employer plans into the TSP are permitted. At some point an IRA custodian will have an IRA client who wants to move their IRA funds into the TSP.

This article sets forth email guidance on this topic because there will be times when TSP personnel are not as helpful as they should be and/or are not as informed as they should be. IRA custodian personnel should understand what is required of the IRA custodian. For example, as discussed below, a TSP representative informs an IRA representative that "it's up to the participant on how they want to treat it, as a rollover or a transfer."

This statement is incorrect. The individual must report the distribution and rollover contribution on his or her federal income tax return. Even though the IRA custodian may issue its check to the TSP for benefit of Jane Doe, there is a distribution which must be reported on a Form 1099-R for Jane Doe. There are special procedures for preparing the Form 1099-R. Reason code "G" is to be used. This transaction is never to treated as a non-reportable transfer.

Email Question:

Attached you will find Request forms and acceptance letter regarding funds leaving ABC Bank.

I have attempted to reach out to the company for clear reporting on their end but they told me it's up to the Participant on how they want to treat it, as a Rollover or Transfer.

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I know Transfers are only from like to like and Direct Rollovers are from Qualified Plan to IRA and vice versa so this leaves me at a loss.

I'm hoping you are familiar with TSP and can provide some clear guidance on how ABC Bank should be coding the withdrawal.

CWF's Response:

The law now authorizes IRA funds to be distributed and then rolled over into the federal thrift savings plan (TSP), 401(k) plan or other employer plan.

An IRA custodian may choose to accommodate an IRA owner (and the employer plan) and send the IRA funds directly to an employer plan alternatively the IRA custodian. It may issue a check to the individual who would then make a rollover contribution into the TSP or other employer plan.

Technically, funds in an IRA cannot be directly rolled over from an IRA into an employer plan as a direct rollover is defined to occur when funds in an employer plan are sent directly to an IRA custodian and not vice versa.

Practically, IRA funds may be directly rolled over into an employer plan. And the IRA custodian in preparing the Form 1099-R is encouraged to use the reason Code "G" rather than a "1" or "7." See attached. Box 2a (taxable amount) should be completed with 0.00.

Funds moving from an IRA to an employer plan or from an employer plan to an IRA can never be a non-reportable transfer as they are two different types of plans. The IRA Custodian must prepare a Form 1099-R to report the distribution. As ABC Bank is the IRA custodian it will need to generate a 2017 Form 1099-R reporting the distribution of $21,831.88. The individual will reflect on his/her 2017 federal tax return - a distribution which is not taxable as it was rolled over.

The thrift savings plan's transfer/rollover form should be improved to make this clear. The thrift savings plan is not concerned because it does not report on an individual basis the making of these rollover contributions. See CWF Form #69 which authorizes sending the IRA funds to the TSP.

Special Instruction
Rollover from an IRA to a Qualified Plan, 403(b) Plan or Section 457(b) Plan

IRA Custodian/Trustee
Name _____
Address _____
City _____ State _____ Zip _____
Phone: (_____) _____

IRA Accountholder
Name _____
Home Address _____
_____
City _____ State _____ Zip _____
County _____ Date of Birth _____
SSN _____ Plan No. _____
Phone: Home (_____) _____ Work (_____) _____

Plan Administrator or Trustee
Name _____
Address _____
City _____ State _____ Zip _____
Phone: (_____) _____
☐ Plan Administrator ☐ Trustee

Special Instructions and Certification by Accountholder
I, the IRA accountholder, hereby request that the IRA custodian/trustee send:
☐ my entire account balance, or
☐ the amount of $_____ ,
from the accounts indicated in the "Financial Information" section of this form, to the specified trustee of the eligible retirement plan as listed above. Since it is reasonable to believe that this distribution is not includable in income because of the rollover instruction, I understand that the withholding rules do not apply to this distribution. Regardless, I expressly waive withholding.

I hereby irrevocably elect to roll over the amount distributed into the specified qualified plan, 403(b) or 457(b) plan.

I certify that I am only rolling over that part of my IRA which is taxable.

I have been advised to consult with my tax or legal advisor. I accept full responsibility that this distribution from my IRA account qualifies to be rolled over into the eligible retirement plan and that the requirements of Code section 408(d)(3)(A)(ii) have been met.

_____ _____
Signature of Accountholder Date

Special Instructions and Certification by Qualified Plan Administrator or Trustee

I hereby certify that the plan which will receive the rollover contribution qualifies under Code Section 401(a), 403(b) or 457(b), as applicable. I assume full responsibility for the determination that these funds are eligible to be received as a rollover contribution and that the requirements of Code section 408(d)(3)(A)(ii) have been met.

_____ _____
Signature of Plan Administrator or Trustee Date

Purpose – *The IRA accountholder has determined that he or she wishes to roll over funds or assets from the referenced IRA to the referenced eligible retirement plan. Prior to January 1, 2002, a rollover from an IRA to a qualified plan or 403(b) plan was permissible only if the IRA qualified as a conduit IRA. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) revised federal income tax law to allow for additional rollovers. See the summary on the reverse side as excerpted from the IRS Publication 590.*

Note an accountholder is not eligible to roll over any of his or her basis (i.e. nondeductible contributions) with respect to an IRA.

The purpose of this form is to create the authority for the IRA custodian/trustee to remit the funds on behalf of the IRA accountholder directly to the eligible retirement plan. This special instruction is needed because the Internal Revenue Code does not authorize a direct rollover from an IRA to an eligible retirement plan as it does for a direct rollover of funds from an eligible retirement plan to an IRA. For federal income tax purposes, the IRA custodian/trustee must treat this transaction as if there was a distribution to the IRA accountholder. Therefore, the IRA custodian/trustee will prepare a Form 1099-R, reporting the distribution to the IRS. The Distribution will be reported on Form 1099-R as a Distribution Code G "Direct Rollover to an eligible retirement plan."

The IRA accountholder should be aware that the eligible retirement plan does not report to the IRS that it received an IRA rollover contribution on behalf of a specific individual as is done by an IRA custodian which receives a direct rollover contribution.

Financial Information

	Investment Account #	Investment Account #
Amount Requested (+)		
Earnings Not Yet Reported to DP (+)		
Interest Penalty (-)		
Fees (-)		
Net Amount Rolled Over (=)		

	Investment Account #	Investment Account #
Amount Requested (+)		
Earnings Not Yet Reported to DP (+)		
Interest Penalty (-)		
Fees (-)		
Net Amount Rolled Over (=)		

IRA #69 (8/13) White — IRA Custodian/ Trustee Yellow — Accountholder Pink — QP Trustee

Additional Discussion of Rollovers From an IRA to a Qualified Plan, 403(b) Plan, or 457(b) Plan.

An eligible retirement plan is: (1) an IRA; (2) a qualified plan under section 401(a) or 403(a); (3) a section 403(b) plan; or (4) a section 457(b) plan as sponsored by a state or local government.

In 2002 and subsequent years the funds or property within the IRA may either qualify as a conduit IRA or they may not. Prior to 2002 the only funds which could be rolled over from an IRA into a qualified plan or section 403(b) plan were such funds which were in a conduit IRA. The status is important because funds rolled over from a conduit IRA will regain their status as qualified plan, section 403(b) plan or section 457(b) plan. Nonconduit IRA funds rolled into a section 401(a) plan, 403(b) plan or section 457(b) plan will be administered by such plan as nonconduit IRA funds.

Rollovers from traditional IRAs into qualified plans.

For distributions after December 31, 2001, you can roll over tax free a distribution from your IRA into a qualified plan. The part of the distribution that you can rollover is the part that would otherwise be taxable (includable in your income). Qualified plans may, but are not required to, accept such rollovers. Rules applicable to other rollovers, such as the 60-day time limit apply. For more information see Publication 590.

Rollovers of traditional IRAs into tax-sheltered annuities (section 403(b) plans).

Prior to 2002, you could not roll over tax free a distribution from a traditional IRA into a tax-sheltered annuity unless the IRA was a conduit IRA.

Beginning with distributions after December 31, 2001, you may be able to roll over distributions tax free from a traditional IRA into a tax-sheltered annuity. You cannot roll over any amount that would not have been taxable.

Although a tax-sheltered annuity is allowed to accept such a rollover, it is not required to do so. For more information see Publication 590.

Rollovers of traditional IRAs into deferred compensation plans of state and local governments (section 457(b) plans).

Prior to 2002, you could not roll over tax free a distribution from a traditional IRA to a governmental deferred compensation plan.

Beginning with distributions after December 31, 2001, if you participate in an eligible deferred compensation plan of a state or local government, you may be able to roll over a distribution from your traditional IRA into a deferred compensation plan of a state or local government. Qualified plans may, but are not required to, accept such rollovers. For more information see Publication 590.

Generation Skipping Taxes and Inherited IRAs

Funds within inherited IRAs may be subject to one or more of the three federal transfer taxes - estate, gift, and generation-skipping.

Set forth below is a brief summary of the generation-skipping transfer tax as applied to IRAs. In order to prevent some individuals being able to reduce the amount of estate tax paid by transferring property to younger family members (grandchildren and great-grandchildren), tax laws were enacted authorizing a generation skipping tax. In general, there are three situations resulting in a generation skipping transfer. First, there is a direct skip. Secondly, there is a taxable distribution. Thirdly, there is a taxable termination. The generation skipping tax does not apply if a grandchild's parent has predeceased the grantor because "no generation is being skipped."

In some situations the IRA trustee has the duty to prepare certain tax return forms and pay the tax liability and in other situations the IRA trustee must prepare certain notices, but an individual will have the duty to prepare and file a tax return and pay the applicable tax.

Email Question/Situation:

Our Trust Tax and Estates Legal counsel is asking if there are any materials available addressing how Generation Skipping Taxes affect IRAs. She has a concern about our obligation to withhold any GST taxes when there is a GST taxable payout after the owner dies. Can you help with this issue and explain how GST affects IRA's, or let me know if there are any materials available? Do we have any obligation to withhold these taxes?

CWF's Response:

Section 2601 is the authority for the generation skipping transfer tax. There are three types of generation skipping transfers subject to be taxed - a direct skip, a taxable distribution, and a taxable termination.

If a taxable termination of a trust (would include an IRA) occurs, the trustee must file (Form 706-GS(T) for the year in which the termination occurs. It reports the tax due and is presumably liable to pay the tax owing.

If there is a distribution to a skip person from a generation skipping trust, the trustee has the duty to prepare a notification form (Form 706-GS(D-1) for the skip person (and the IRS). The skip person uses it to prepare and file Form 706GS(D) and pays the tax owing. The trustee appears to have no duty to withhold any amount of the distribution for tax purposes. This tax is a calendar year with April 15 being the deadline unless there is an extension.

A taxpayer does receive a lifetime GST exemption to be allocated against property which he or she transfers to a skip person. In general, the GST exemption is the same as the estate exemption - $5,450,000 for 2016 and $5,490,000 for 2017.

Allocation of the GST exemption to a specific property is made by the taxpayer on Form 709 or by the estate's representative on Form 706. Once made an allocation cannot be changed. All income and appreciation with respect to property after the allocation's effective date is exempted from the generation-skipping transfer tax. The maximum tax rate is 40%.

IRS Publications 559 and the various 706 and 709 forms and instructions should be reviewed for an additional discussion.

Related IRS Form#

Product #	Title	Rev. Date
Form 706	United States Estate (and Generation-Skipping Transfer) Tax Return	0813
Inst 706	Instructions for Form 706, United States Estate (and Generation-Skipping) Transfer (Tax Return)	1116
Form 706-A	United States Additional Estate Tax Return	0913
Inst 706-A	Instructions for Form 706-A, United States Additional Estate Tax Return	0916
Form 706-CE	Certification of Payment of Foreign Death Tax	1013
Form 706-GS(D)	Generation-Skipping Transfer Tax Return for Distributions	0813
Inst 706-(D)	Instructions for Form 706-GS(D), Generation-Skipping Transfer Tax Return for Distributions	0916
Form 706-GS(D-1)	Notification of Distribution From a Generation-Skipping Trust	1008
Inst 706-GS(D-1)	Instructions for Form 706-GS(D-1), Notification of Distribution From a Generation-Skipping Trust	1116
Form 706-GS(T)	Generation-Skipping Transfer Tax Return for Terminations	1113
Inst 706-GS(T)	Instructions for Form 706-GS(T), Generation-Skipping Transfer Tax Return for Terminations	1116
Form 706-NA	United States Estate (and Generation-Skipping Transfer) Tax Return	0813
Inst 706-NA	Instructions for Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return (Estate of nonresident not a citizen of U.S.)	0916
Form 706-QDT	U.S. Estate Tax Return for Qualified Domestic Trusts	0814
Inst 706-QDT	Instructions for Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts	0814