

THE Pension Digest

ALSO IN THIS ISSUE –

DOL Finalizes 18 Month Fiduciary Rules Extension
Page 1

Making IRA Contributions On-line or Establishing a Payroll Deduction IRA With Yourself Versus With Your Employer
Page 1

Are IRA Amendments Required for 2017-2018?
Page 2

Three Planning Concepts-Why More Individuals Will Want or Should Want Profit Sharing or One Person 401(k) Plans
Page 3

Important Forms 1099-R Rules
Page 4

Reporting Roth IRA Distributions
Page 5

An Unwanted IRA Situation-IRA Funds Not Transferred Into a Traditional IRA
Page 8

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



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DOL Finalizes 18 Month Fiduciary Rules Extension

On November 27, 2017 the U.S. Department of Labor announced an 18-month extension from January 1, 2018 to July 1, 2019, of the special transition period for the Fiduciary Rule's Best Interest Contract Exemption, the Principal Transactions Exemption and of the applicability of certain amendments to the Prohibited Transaction Exemption 84-24.

On August 31, 2017 the EBSA/DOL had issued a proposed rule extending the transition period. Such rule is now final.

During this transition period the DOL will continue its review under the Presidential Memorandum of February 3, 2017, to review public comments, and decide whether to propose further changes. During this transition period, a fiduciary advisor who makes an investment recommendation has the duty to give advice that conforms to "impartial conduct standards." There is no requirement that an IRA custodian or trustee must furnish an investment recommendation. An advisor must adhere to a best interest standard when making investment recommendations, charge no more than reasonable compensation and not make any misleading statements. The DOL has stated it is extending its temporary enforcement policy set forth in Field Assistance Bulletin 2017-02. The DOL will treat a fiduciary as being in compliance during this transition period as

long as the fiduciary is working diligently and in good faith to comply with the transition rules. Unless modified, the exemptions' remaining requirements will be come effective on July 1, 2019.

One of the main reasons to furnish 2017-2018 IRA Amendments is to discuss the Fiduciary rule and the transition rules.

Making IRA Contributions On-line.

More banks should be making it easier for individuals to make IRA contributions. A person should be able to make these contributions on-line. Under a Payroll Deduction IRA, an employee establishes a Traditional IRA and/or a Roth IRA with an IRA custodian. The employee then authorizes his or her employer to deduct a defined amount from his or her payroll to be sent to the IRA Custodian. Under a Personal Payroll IRA Deduction Program, an individual instructs their bank to withdraw a defined amount from their checking account which is then contributed into their IRA. This may or may not be scheduled. It is processed for the current year unless instructed otherwise.

Holiday Hours

CWF's office will be closed
On New Year's Day
(Monday, January 1, 2018)

We wish everyone a
wonderful holiday season.

Continued on page 2

Are IRA Amendments Required For 2017-2018?

The governing IRA regulation requires an IRA custodian to furnish an IRA amendment when the IRA plan agreement provisions are changed or when one or more of the topics discussed in the IRA disclosure statement is no longer correct and it needs to be revised to set forth a current explanation.

More IRA changes have occurred in 2017 than many people realize. There were also a number of changes in 2015 and 2016.

There are two types of IRA amendments - one which amends the IRA plan agreement and one which amends the IRA disclosure statement. An IRA custodian/trustee may indeed to furnish both amendments. Regulation 1.408-6(4)(ii)(C) requires that an IRA amendment be furnished no later than the 30th day after the amendment is adopted or becomes effective.

The following are the primary changes which occurred in 2017:

1. The Internal Revenue Service (IRS) issued revised model IRA Forms, 5305, 5305-A, 5305-R and 5305-RA. These forms now indicate the maximum contribution amount for 2017 is \$5,500 if under age 50 as of December 31, 2017, and \$6,500 if age 50 or older as of December 31, 2017. These same limits apply for 2018.

2. The Disaster Tax Relief and Airport and Airway Extension Act of 2017 is a new tax which became effective in October of 2017. It creates special tax relief for IRA owners injured by hurricanes Harvey, Irma, and/or Maria. Special IRA roll over and distribution rules apply to these injured IRA owners.

3. The Department of Labor (DOL) finalized its regulation setting forth a new definition of an "investment advice fiduciary." There are other related rules which have not yet been finalized. Until then, certain interim or transitional rules apply. Although further DOL and IRS guidance will need to be issued, a basic discussion should be furnished to IRA owners.

4. The IRS issued additional guidance as to what an IRA owner needs to do if he or she has a failed rollover because the 60-day rule was not complied with and he or she wishes to obtain a waiver from the IRS so that he or she may complete the rollover so the distribution is not required to be included in income. The IRS created

a self-certification procedure. It is important for individuals to understand how to use this new procedure and its benefits and limitations.

5. There are certain income limits applying to traditional IRAs and Roth IRAs for 2017 and 2018 and the Savers Tax Credit. Many of these limits change each year as a result of being adjusted to reflect a cost of living adjustment. More individuals may be eligible to make deductible traditional IRA contributions or Roth IRA contributions.

In order to determine which amendment should be furnished, an IRA custodian/trustee wants to understand when was the last time an IRA amendment was furnished and what did it cover.

In 2018, many IRA custodians will furnish a comprehensive IRA amendment because it amends the IRA plan agreement and also furnishes an IRA disclosure statement discussing the IRA rules as they apply in 2017 and 2018. Furnishing the 2017-2018 comprehensive IRA amendment by January 31, 2018 or May 31, 2018 provides current accurate IRA information allowing individuals to hopefully make informed IRA decisions.

Combining the 2017-2018 IRA Amendment with other IRA statements and notices can be cost effective as mailing costs can be minimized.

Call us at 1-800-346-3961 and we will assist.

Four Planning Concepts - Why More Individuals Will Want Or Should Want A Profit Sharing or One Person 401(k) Plan!

1. These plans by law authorize employers to make very large annual contributions and to claim deductions for such amounts. With a profit sharing plan an employer, including a one person plan, is permitted to contribute 25% of a person's compensation up to a maximum of \$54,000. This is the same limit applying to a SEP-IRA plan. If the plan is a 401(k) plan, the employer is also allowed to contribute and deduct the applicable elective deferral limit. This additional contribution cannot be made under the SEP-IRA plan. The IRS chooses to not discuss the right of an employer to deduct the elective deferrals in addition to the 25% of compensation limit.

As discussed in planning concepts 2 and 3, an individual wants to accumulate as large a balance as possible within a Roth IRA and/or a designated Roth account within a 401(k) plan or similar plan. Why? There are not many investments that generate tax-free income year-after-year.

2. The 401(k) plan may allow the making of Designated Roth IRA contributions.

An individual whose income is too high is ineligible to make regular Roth IRA contributions. There is no income restriction for making designated Roth contributions to a 401(k) plan. An individual must participate in a 401(k) plan written to authorize the making of designated Roth IRA contributions. Either a new plan must be established or an existing plan must be amended to include this feature.

3. These two plans can be established to accept certain rollovers from IRAs so that an individual may isolate his or her non-deductible basis and then convert such an amount tax free to his or her Roth IRA.

There will be individuals having traditional IRAs containing both taxable funds and nontaxable funds. An individual will be less inclined to convert such funds because any conversion will contain both a taxable portion and a nontaxable portion. Taxes must be paid on the taxable portion. For example, John Doe has \$120,000 of taxable funds and \$30,000 of nontaxable funds in his traditional IRA or IRAs. If he converts the

entire \$150,000, then he will pay taxes on the \$120,000. If he converts less than \$150,000, then 80% (\$120,000/\$150,000) will be taxable and 20% will be nontaxable.

However, with some planning, this pro-rata rule need not apply. Most qualified plans are written to prohibit rolling over any nontaxable funds within an IRA into the qualified plan. That is, the \$30,000 may not be rolled over into a qualified plan. Therefore, John will find it worthwhile to roll over his \$120,000 into his profit sharing plan. And if he does so, then the remaining \$30,000 within the traditional IRA is nontaxable and is eligible to be converted to a Roth IRA no taxes owing.

It is generally thought that from 1987-2009 few individuals chose to make non-deductible traditional contributions even though they were eligible to do so. Presumably, they did not think the economic benefit was sufficiently large to induce them to make the non-deductible contribution. Many of these individuals had high incomes and were ineligible make a conversion under the pre-2009 conversion rules.

Now that everyone with funds in a traditional IRA is eligible to convert traditional IRA funds, more individuals should start making nondeductible contributions and then convert them.

4. These plans as all qualified plans and unlike IRAs are permitted to have individuals act as the plan trustee rather than having a financial institution as a corporate entity serve as the plan trustee. Individuals like these plans because they can serve as the trustee. Financial institutions like these plans because the individual is the fiduciary rather than the financial institution.

In order to establish a profit sharing plan or a 401(k) plan, an employer will generally adopt a standardized or non-standardized prototype as sponsored by a bank or other regulated financial institution, an accounting firm, a law firm or a pension consulting firm. There are costs associated with writing, maintaining and filing such prototype plans with the IRS and so a prototype sponsor such as CWF charges various fees in order for an employer to establish such a plan. These plans are more complicated than IRAs and the large tax benefits mean individuals are willing to pay reasonable fees to be able to realize such tax benefits.

<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0119 <div style="font-size: 2em; font-weight: bold;">2017</div> Form 1099-R		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. Copy 1 For State, City, or Local Tax Department	
PAYER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Gross distribution \$ _____ 2a Taxable amount \$ _____ 2b Taxable amount not determined <input type="checkbox"/> Total distribution <input type="checkbox"/>			
PAYER'S federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a) \$ _____	4 Federal income tax withheld \$ _____		
RECIPIENT'S name Street address (including apt. no.) City or town, state or province, country, and ZIP or foreign postal code		5 Employee contributions / Designated Roth contributions or insurance premiums \$ _____ 7 Distribution code(s) IRA/SEP/SIMPLE <input type="checkbox"/> 9a Your percentage of total distribution % _____		6 Net unrealized appreciation in employer's securities \$ _____ 8 Other _____ % 9b Total employee contributions \$ _____	
10 Amount allocable to IRR within 5 years \$ _____	11 1st year of desig. Roth contrib.	FATCA filing requirement <input type="checkbox"/>	12 State tax withheld \$ _____ \$ _____	13 State/Payer's state no.	14 State distribution \$ _____ \$ _____
Account number (see instructions)			15 Local tax withheld \$ _____ \$ _____	16 Name of locality	17 Local distribution \$ _____ \$ _____

Form **1099-R** www.irs.gov/form1099r Department of the Treasury - Internal Revenue Service

Important Form 1099-R Rules for an IRA Custodian to Follow and Observations

- #1. An IRA includes all investments under one IRA plan agreement. File only one Form 1099-R no matter how many distributions have been made from the investments of the same IRA plan agreement during one year unless different reasons codes apply. Example, Jane Doe is paid a death distribution (reason code #4) from her former spouse's IRA (she did not treat this IRA as her own) and she is also paid a distribution from her only IRA. She is age 65 (reason code #7). One Form 1099-R must be filed for all distributions with a reason code 4 and a Form 1099-R must be filed for all distributions with a reason code 7.
- #2. The Form 1099-R and the Form 5498 are per plan agreement forms. If a person, age 65, has two traditional IRA plan agreements and takes a distribution from each IRA, he or she must be furnished two 1099-R forms each having a reason code 7 in box 7. The IRA custodian could be fined \$260.00 times 2 if it only created one Form 1099-R. The IRA custodian must file Form 1099-R using the same name and EIN/TIN used to deposit any tax withheld and to file Form 945, Annual Return of Withheld Federal Income Tax.
- #3. The IRS wants an IRA custodian to prepare a Form 1099-R for every distribution, even those less than \$10.00. The instructions are not very clear whether distributions (aggregated) less than \$10 for the year must be reported.
- #4. If an IRA custodian is required to file a Form 1099-R, then it must furnish a statement (i.e. a copy of the 1099-R form) to the recipient.
- #5. An account number must be used on a Form 1099-R when a recipient has more than one IRA plan agreement and you are required to file multiple Form 1099-R's. However, the IRS encourages an IRA custodian to designate an account number for all Form 1099-Rs which it files.
- #6. Never enter a negative amount in any box on Form 1099-R.
- #7. Use the name and TIN of the individual or entity which receives funds from the IRA. Normally, this will be the IRA accountholder. However, if you make a distribution to a beneficiary (whether an individual, trust or estate), then the 1099-R is prepared using the name and TIN of

the beneficiary. You do not use the name of the decedent for payments made to beneficiaries after his or her death.

- #8. An IRA custodian has a duty to correct a Form 1099-R that it knows was prepared incorrectly. The correction must be made as soon as possible. See the IRS instructions as a 2015 law does allow the IRA custodian to not correct an incorrect Form 1099-R in some limited situations.
- #9. For a distribution from a traditional IRA boxes 1 and 2a are to be completed with the same amount unless an exception applies.
- #10. For a distribution from a Roth IRA, box 2a is to be left blank unless an exception applies.
- #11. An IRA custodian will generally check box 2b, taxable amount not determined. There will be times when it is not checked - withdrawal of an excess or current year contribution before the due date, a recharacterization and rolling funds from an IRA into an accepting employer plan.
- #12. The total distribution box is also found in 2b. An "X" is to be entered in this box when the amount shown in box 1 is a total distribution. The instructions for the total distribution section of box 2b are not as clear as they should be. It is doubtful if this box applies to IRA distributions; but the instructions are unclear, and an IRA custodian should complete the box pursuant to the instructions. In order for a person to use the favorable 10 year averaging or capital gain treatment he or she must receive a total distribution. Such treatment does not ever apply to any type of IRA distribution. If this box is not checked, the IRS will question any individual's attempt to use 10 year averaging. A total distribution is one or more distributions within one tax year in which the entire balance is distributed. This means if two or more nonperiodic distributions occur in more than one year, then there is no total distribution and the box does not need to be checked. For example, a person with an IRA balance of \$30,000 withdraws \$10,000 in 2015 and the remainder in 2017 has not had a total distribution. Exception. If periodic or installment payments are made in more than one year, this box is to be marked for the year in which the final payment is made.

- #13 For a distribution of contributions plus earnings from an IRA under **section 408(d)(4)**, report the gross distribution in box 1, only the earnings in box 2a, and enter Code 8 or P, whichever is applicable, in box 7. Enter Code 1, 2, 4 or 7, if applicable.
- #14. For a distribution of contributions without earnings after the due date of the individual return, under section **408(d)(5)**, leave box 2a blank, and check the "Taxable amount not determined" check box in 2b. Use Code 1 or 7 in box 7 depending on the age of the accountholder.
- #15. For a distribution from an IRA that is payable to the trustee of, or is transferred to, an employer plan, or for an IRA recharacterization, enter 0 (zero) in box 2a.
- #16. In box 7 indicate the distribution code and enter an "X" in the **IRA/SEP/SIMPLE check box** if the distribution is from a traditional IRA, SEP IRA, or SIMPLE IRA. Do NOT check the box for a distributing from a Roth IRA or for an IRA recharacterization.
- #17. **Roth IRAs.** For a distribution from a Roth IRA, report the total distribution in box 1 and leave box 2a blank except in the case of an IRA revocation or account closure and a recharacterization. Use Code J, Q, or T as appropriate in box 7. Use Code 8 or P, if applicable, in box 7 with Code J. Do not combine Code Q or T with any other codes.

However, for the distribution of excess Roth IRA contributions, report the gross distribution in box 1 and only the earnings in box 2a. Enter Code J and Code 8 or P in box 7.

Reporting Roth IRA Distributions on the 2017 Form 1099-R

The general preparation rule is – a Roth IRA custodian is to report the total distribution amount in box 1 and 2a (taxable amount) is to be left blank. Note the instruction to leave box 2a blank does not mean to insert "0.00" on the copy furnished to the individual.

When box 2a is left blank, the IRS instructions for box 2b suggest that box 2b (taxable amount not determined) is to be checked. The IRS instructions do not expressly

Continued on page 6

state this. Since a Roth IRA custodian does not know if a specific Roth IRA distribution is taxable or not because of the ordering rules applying to Roth IRA distributions, CWF believes that box 2b is to be checked.

There are, of course, some exceptions when box 2a is to be completed with an amount and is not to be left blank. This in turn means box 2b is not checked.

Exception #1. There has been the withdrawal of current year contribution including a true excess contribution. Only the earnings are to be reported box 2a. If there has been no earnings, then report 0.00.

Exception #2. If there has been a deemed recharacterization withdrawal from the Roth IRA, then report 0.00 as a recharacterization is a nontaxable transaction.

Box 7 is comprised of two boxes. The “second” box is for IRA/SEP/SIMPLE. This box is not to be checked when the distribution is from a Roth IRA.

In the “first” box, the proper Code must be entered to describe the distribution from the Roth IRA. Unlike with traditional IRA distributions where two Codes are often used, with Roth IRAs as discussed later, two Codes are only used in two situations.

Code Q – to be used if the custodian knows the 5-year time period has been met and the recipient is either the Roth IRA owner who has reached age 59½ or is disabled, or is an inheriting beneficiary. Note that for purposes of determining if the 5-year time period requirement has been met the Roth IRA custodian only considers the time the Roth IRA has been at the Roth IRA custodian. That is, the time the individual may have had the same Roth IRA funds with another custodian is not considered. No other Code is ever used with Code Q.

Code T – to be used if the custodian knows the 5-year time period has NOT been met and the recipient is either the Roth IRA owner who has reached age 59½ or is disabled, or is an inheriting beneficiary. Note that for purposes of determining if the 5-year time period requirement has been met, the Roth IRA custodian only considers the time the Roth IRA has been with the Roth IRA custodian. That is, the time the individual may have had the same Roth IRA funds with another custodian is not considered. No other Code is ever used with Code T.

Code J – to be used when Code Q or Code T is NOT used. In general, the use of Code J means there has been an early (i.e. before age 59½) distribution from the Roth IRA. For example, Jane Doe has not yet attained age 59½. Regardless of whether she has met the 5-year time period requirement, Code J is to be used.

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Gross distribution \$ 2a Taxable amount \$	OMB No. 1545-0119 2017 Form 1099-R		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
PAYER'S federal identification number	RECIPIENT'S identification number	2b Taxable amount not determined <input type="checkbox"/>	Total distribution <input type="checkbox"/>		
3 Capital gain (included in box 2a) \$		4 Federal income tax withheld \$		Copy 1 For State, City, or Local Tax Department	
RECIPIENT'S name		5 Employee contributions /Designated Roth contributions or insurance premiums \$			
Street address (including apt. no.)		7 Distribution code(s) IRA/SEP/SIMPLE <input type="checkbox"/>		8 Other \$ %	
City or town, state or province, country, and ZIP or foreign postal code		9a Your percentage of total distribution %		9b Total employee contributions \$	
10 Amount allocable to IRR within 5 years \$	11 1st year of desig. Roth contrib. <input type="checkbox"/>	FATCA filing requirement <input type="checkbox"/>	12 State tax withheld \$	13 State/Payer's state no. \$	14 State distribution \$
Account number (see instructions)		15 Local tax withheld \$		16 Name of locality \$	17 Local distribution \$

Form **1099-R** www.irs.gov/form1099r Department of the Treasury - Internal Revenue Service

The two situations where two Codes are used to report a Roth IRA distribution are as follows.

Use Code J8 when there has been the withdrawal of a current year Roth IRA contribution, including a true excess contribution, when the contribution is made one year (could either be 2016 or 2017) and is withdrawn the same year (2016 or 2017). The 8 informs the individual and the IRS that the income, if any, is taxable for the year in which the contribution was made.

Use Code JP when there has been the withdrawal of a current year Roth IRA contribution, including a true excess contribution, when the contribution is made in 2016 but withdrawn in 2017. The P informs the individual and the IRS that the income, if any, is taxable for 2016 since the contribution was made in 2016.

Code N – to be used if a Roth IRA contribution was made during 2017 and it was also recharacterized (deemed to have been withdrawn from the Roth IRA) in 2017 to be a traditional IRA.

Code R – to be used if a Roth IRA contribution was made during 2016, but it was recharacterized (deemed to have been withdrawn from the Roth IRA) in 2017 to be a traditional IRA.

Code 2 – to be used when the withdrawal was due to an IRS levy (not a state revenue department) or the withdrawal was pursuant to a substantially equal periodic payment schedule. These are early distributions, but an exception is known so the individual and the IRS is told

that the 10% additional tax is not owed. The general IRS instructions for box 2a still apply, box 2a is to be checked indicating that the custodian does not know the taxable amount.

Code 5 – to be used when a prohibited transaction has occurred. Code 5 means the account is no longer a Roth IRA. The general IRS instructions for box 2a still apply, this box is to be checked indicating that the custodian does not know the taxable amount.

The Codes as discussed above are the only Codes to be inserted in box 7 for a Roth distribution. Note that no other Codes are never used to report a distribution from a Roth IRA.

Code B reports a distribution of Designated Roth funds to a person from a 401(k)/403b/457b plan and is never used to report a distribution from any IRA, including a Roth IRA.

Note that Code J is not used with any other code except it is to be used with the Code 8 or Code P, as applicable. Code J1 is never used. The current IRS approach does not inform the individual or the IRS that if the recipient is under age 59½ that he or she owes the 10% if there is any taxable income being distributed.

Special Reporting When Roth Distribution Is Due to Revocation By the Individual or By the Custodian For CIP Reasons -

If a Roth owner revokes (7-day rule) a regular Roth IRA contribution or if the custodian for CIP reasons closes the Roth IRA after the making of a regular Roth IRA contribution, but there are no earnings, then the gross distribution is entered in box 1, enter 0.00 in box 2a, box 2b is not checked and Code J is used in box 7. Note this is true even if the individual is older than age 59½ or is disabled.

The above reporting will also be done for any conversion contribution which is revoked by the individual or closed by the custodian for CIP reasons.

If a Roth owner revokes (7-day rule) a regular Roth IRA contribution or if the custodian for CIP reasons closes the Roth IRA after the making of a regular Roth IRA contribution, and there are earnings, then the gross distribution is entered in box 1, enter the amount of earnings in box 2a, box 2b is not checked and Code J8 is used in box 7. Note this is true even if the individual is older than age 59½ or is disabled.

The above reporting will also be done for any conversion contribution which is revoked by the individual or closed by the custodian for CIP reasons.

If a Roth owner makes a rollover contribution (or a transfer contribution) from another Roth IRA and then revokes (7-day rule) or if he or she makes a rollover contribution (or a transfer contribution) from another Roth IRA and the custodian for CIP reasons closes the Roth IRA after such rollover or transfer, then the gross distribution is entered in box 1, box 2a is to be completed with the same amount as in box 1 and Code J is used in box 7. Note this is true even if the individual is older than age 59½ or is disabled.

CWF Observation/Comment. We do not understand why the IRS wants the taxable amount box completed with the same amount as the gross distribution from the revoked or closed Roth IRA. When the individual withdrew the funds from the original Roth IRA, the Form 1099-R for that distribution would be prepared with box 2a being blank. We do not understand the rationale requiring the new custodian to report the distribution of the closed or revoked Roth IRA as being taxable. This make sense for a distribution from a traditional IRA, but not a distribution from a Roth IRA.

If a Roth owner has made a rollover contribution into his or her Roth IRA from a qualified plan and then revokes (7-day rule) it or the custodian for CIP reasons closes the Roth IRA after such rollover and there are no earnings, then the gross distribution is entered in box 1, enter 0.00 in box 2a, box 2b is not checked and Code J is used in box 7. Note this is true even if the individual is older than age 59½ or is disabled.

If a Roth owner has made a rollover contribution into his or her Roth IRA from a qualified plan and then revokes (7 day rule) it or the custodian for CIP reasons closes the Roth IRA after such rollover and there are earnings, then the gross distribution is entered in box 1, enter the earnings in box 2a, box 2b is not checked and Code J is used in box 7. Note this is true even if the individual is older than age 59½ or is disabled.

In conclusion, the IRS has detailed rules and procedures to be followed by the custodian to report Roth IRA distributions. Remember, the IRS may assess a \$260 per form fine for each improperly prepared Form 1099-R. Until the IRS furnishes additional guidance explaining more definitively that a person who receives a Form 1099-R with a reason Code Q in box 7 need not mention it on his or her federal income tax return, an individual will want to explain on the return that the distribution is qualified and is not taxable.

An Unwanted IRA Situation - IRA Funds Not Transferred Into A Traditional IRA

IRA contributions could first be made for tax year 1975. One might think there would be few difficult IRA administrative situations as the IRS has had 43 years to issue guidance. One area where the IRS has issued minimal guidance is - an IRA transfer is processed improperly by the IRA custodian to whom the transfer was sent. What tax rules apply and can the situation be corrected?

Set forth below is CWF's email discussing this situation. Your bank and your client does not want to be confronted with this situation so be sure when an IRA transfer is sent to your financial institution it is properly invested into an IRA asset.

The tax question/situation is, did a taxable distribution occur because the transferred IRA funds were not reinvested as IRA funds and can it be corrected by using the 60 automatic day rollover waiver rule?

The IRS has the authority to waive the 60 rollover rule when equity and fairness requires it. I would like to think the IRS would conclude it should use its authority to waive the 60 day rule in order so that the taxpayer in this mistaken transfer situation is not required to include the distribution in his/her taxable income. I hope the IRS would not try to argue that a failed rollover and a failed transfer are different transactions.

Currently, the IRS has 3 procedures for waiving the 60 day rollover requirement and allowing the distribution to not be taxed.

Procedure #1 is the IRS' automatic rollover procedure. There are various reasons why this approach is not the preferred approach to correct the situation. First, it can be argued the mistake was not discovered and corrected within the one year time deadline. Second, since this was a transfer and not a rollover the client did not complete the required rollover forms as required by this procedure.

Procedure #2 is where the client pays the \$10,000 filing fee and submits a written request for the waiver. At this time I limit my discussion because I presume neither the bank nor the client wants to bear the \$10,000 fee plus the cost of preparing the filing.

Procedure #3 is where the IRS allows the individual to complete a rollover after the 60 day time period has expired. The individual must complete a self-certification form, the IRA custodian must report this late rollover on the Form 5498 and the individual then

should attach to his tax return all documentation necessary to support their position that the distribution should not be taxed.

The IRS created this procedure in late August of 2016. Your IRA client's situation arose in August of 2016.

The IRS issued additional guidance on this topic in November of 2016 when the IRS issued or revised the instructions for completing the 2017 Form 5498. The IRS did not revise the instructions for the 2016 Form 5498.

The deemed distribution occurred in 2016 and his/her late rollover occurs in 2017. No one was aware of the "error" until 2017.

We believe the client can now use the self-certification procedure. The client should complete the self-certification form. The client will wish to file an amended 2016 federal income tax return. The client will wish to reference or attach the 2017 Form 5498 and the 2016 Form 1099-R as discussed below. He will wish to reflect the distribution on line 15a of the Form 1040 and that it is not taxable due to his/her qualifying late rollover. IRA custodian #1 may write a letter discussing the situation and making the case that the distribution should not be taxed. This letter should be attached to the tax return.

IRA custodian #1 should prepare the missed 2016 Form 1099-R. IRA custodian #1 should consider paying the \$250 penalty fee (times 2) at the time of filing so the IRS would not have to ask for it.

The IRA custodian #1 should report on the 2017 Form 5498 this late rollover in box 13 as discussed in the November 2016 newsletter.

Even though Procedure #2 does not apply, the client or his tax accountant will wish to review it and include much of the same information with the amended 2016 tax return. There should be an explanation that there was no personal use of these funds and that the error was corrected as soon as possible after it was discovered.

The bank and the client do want to consider possible courses of action if the IRS officer handling the amended return does not agree to grant the waiver and seeks the taxes owing plus interest and penalties. I believe Procedure #2 could still be used as a last resort.