The Pension Digest

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ALSO IN THIS ISSUE –

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

IRA Payroll Deduction Plans - More Employers (Including Banks) and Employees Should Be Participating

Retirement statistics almost always indicate many individuals are not saving or investing what they should to ensure a financially secure retirement. All employers, including a financial institution which is an IRA custodian/trustee should be thinking - should we be helping our employees by offering a payroll deduction program. Such a program can be sponsored in addition to another retirement plan, be it a 401(k) plan, profit sharing plan, SEP IRA plan or SIMPLE IRA plan.

Financial institutions serving as an IRA custodian/trustee should be ready and able to help its employer customers with their payroll deduction programs. A person does not need an employer to assist with making IRA contributions, but most employees will appreciate their employer's participation. As with any IRA, once the funds go into the employee's IRA, the funds are always 100% vested or owned on behalf of the individual.

What is a payroll deduction program?

An employer will need to decide what payroll deduction services it will render and then communicate its policies and procedures to its employees. There is no legal requirement to offer such services to all employees, but most employers would choose to do so.

The employer will notify its employees that an employee can complete a payroll deduction form authorizing that an amount be withheld from their payroll and then contributed to their traditional IRA and/or Roth IRA. Although normally done on a periodic basis, the payroll deduction can either be done on a periodic basis or on a nonperiodic basis.

The employee may establish their traditional IRA or Roth IRA at whatever financial institution they choose. However, it may be possible the employees would accommodate the employer's desire to deal with just one financial institution. An employer has the responsibility to transmit the withheld payroll funds to the IRA custodian on a timely basis. Once contributed, the employer would have no further responsibility.

As long as the employer limits its actions as discussed above, the payroll deduction plan is not an ERISA pension plan subject to the many laws and reporting requirements applying to an ERISA plan. There is no annual filing or reporting requirements. There is no duty to complete a person's Form W-2 to show participation in a payroll deduction program. Participation in a payroll deduction program does not make a person an active participant in a retirement plan for purposes of determining whether a person is eligible to claim a tax deduction for their contribution. The individual is responsible (and the employer is not responsible) to comply with the contribution and tax deduction rules.

An employer can decide if it would pay an employee additional compensation (after-tax compensation) so that the employee would be more willing to instruct to have a payroll deduction contribution. There are no formal IRS rules

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governing what an employer is to do if it decides to terminate its payroll deduction program. An employer should notify its employees that as of a certain date the payroll deduction program has been terminated.

There is IRA business to be gained by assisting your business clients with establishing a payroll deduction program. And a financial institution sponsoring a 401(k) plan can also sponsor a payroll deduction IRA program for its employees. Help your employees save/invest more for retirement.

Inherited IRAs - To Accept Transfers or Not.

Most financial institutions with the authority to be an IRA custodian will decide to accept the transfer of inherited IRA funds. Why? These inherited or beneficiary accounts tend to be long term accounts. There is usually just one distribution per year. Each institution must decide what fees, if any, will be charged with respect to the inherited IRA.

The following email guidance was recently furnished to a financial institution after it had merged with another financial institution. Prior to the merger one institution had accepted the transfer of inherited IRAs and the other had not. A decision was to be made as to what the policy would be after the merger.

Subject: Deciding Whether To Accept Transfers of Inherited IRAs Not Originating at ABC Banking and Trust Company

I understand that some IRA custodians/trustees have adopted the approach that they will not accept transfers of inherited IRAs originating at another IRA trustee. However, the IRA trustee will administer the inherited IRA if the IRA owner had their IRA with ABC Banking and Trust at the time of their death.

You did not send me any written explanation why the other institution had adopted its policy that it was unwilling to accept the transfer of an inherited IRA. Does such a writing exist so that one can understand the rationale for not wanting to service inherited IRAs?

For the reasons discussed below I believe a bank should be willing and want to accept the transfer of inherited IRA funds especially if the inheriting beneficiary is already a bank client or wants to be a new bank client. I don't believe an IRA trustee is subjecting itself to increased liability as long as it services the inherited IRA as it should.

Inherited IRA funds will generally be long term accounts as current law allows a non-spouse beneficiary to withdraw required minimum distributions over their life expectancy. This is true whether the IRA funds are invested in time deposits or trust investments. Advisory and management fee income can be earned by the IRA trustee as long as the IRA trustee's fees are reasonable.

An IRA trustee must perform special administrative duties for inherited IRAs. There must be special titling of the IRA for Form 5498 reporting purposes. In general, no additional contributions can be made except for transfers from another like-kind inherited IRA and direct rollovers of 401(k) or other pension funds. The inheriting beneficiary must comply with the required distribution rules.

The IRS has provided conflicted guidance regarding the tasks an IRA custodian is to provide with respect inherited IRAs. See the attached pages from the IRS instructions for Forms 5498 and 1099-R. Regardless of these instructions, we at CWF believe the IRA trustee should assist a beneficiary with complying with the RMD rules because Article IV of the IRA plan agreement does require that RMDs occur after the IRA owner has died. At a minimum assist means furnishing an RMD notice and reminding the beneficiary he or she will owe the 50% tax if an RMD is not timely withdrawn. I would suggest adopting the policy that the IRA trustee will force the distribution by a certain date if the inheriting beneficiary has not furnished written instruction why such distribution is not required.

Under current law an inheriting IRA beneficiary cannot take or receive a distribution and the make a rollover contribution as the statutory law expressly prohibits this. This means the only way an inheriting beneficiary may move the inherited IRA funds away from the current IRA trustee is by a transfer.

The transfer of an inherited IRA is not identical to the transfer of a regular IRA because with respect to the inherited IRA because there are special beneficiary RMD considerations. In general, is the beneficiary's

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RMD to be determined using the life distribution rule or the 5 year rule, if applicable?

The basic transfer rule is - whatever rule the beneficiary is using at IRA trustee #1 must continue to apply at IRA trustee #2. This is a tax subject so there are time when there are exceptions.

As long as the IRA owner designates individuals or a non-trust entity such as a university, church or charity as his or her IRA beneficiaries, the administration of an inherited IRA is relatively easy.

There will be times when the IRA owner designates a trust as his or her IRA beneficiary and then dies. An inherited IRA will need to be established - the Jane Doe Trust as beneficiary of Jane Doe's IRA. Admittedly the administration - of such inherited IRAs can be complicated because trusts can be complicated, the tax rules are complicated and IRS guidance is very limited. I believe the IRA trustee should assist the trustee of the trust. As with many tax situations, the IRA trustee and trustee of trust may need to jointly discuss the situation and then settle on a course of action. There may be times when the financial institution serving as the IRA trustee is also serving as the trustee of the trust. There should be comprehensive written explanations for the IRA transactions and what fees are being earned for serving as the IRA trustee versus serving as the trustee of the trust.

It is also possible for a person to establish a trusteed IRA. In this case, the individual and the IRA trustee will establish trust distribution provisions at the time the trusted IRA is established. Such an IRA can also be transferred.

In summary, I believe the policy of never accepting the transfer of an inheriting originating with another IRA trustee is imprudent. ABC Banking and Trust Company is a trust entity and it should generally want to accept transfers of inherited IRAs. Of course, there may be some inherited IRAs which have issues which it should refuse to accept.

Completing the 2018 Form 1099-Q (Payments from a Coverdell ESA)

As with other IRS tax reporting forms, the Form 1099-Q is used by an individual to prepare his or her tax return and it is used by the IRS to make a basic determination if the individual has properly determined and reported the CESA transactions on his or her tax return.

A CESA custodian/trustee must file the 2018 Form 1099-Q to report every distribution from a Coverdell ESA. Completing the Form 1099-Q is similar to completing the Form 1099-R for IRA distributions, but there are many differences. The IRS instructions on reporting distributions from CESAs would certainly be improved if the IRS would clarify some of the instructions.

3131 ☐ VOID ☐ CORRECTED

PAYER'S/TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no.		1 Gross distribution $ 2 Earnings $	OMB No. 1545-1760 2018 Form 1099-Q	Payments From Qualified Education Programs (Under Sections 529 and 530)
PAYER'S/TRUSTEE'S TIN	RECIPIENT'S TIN	3 Basis $	4 Trustee-to-trustee transfer ☐	Copy A For Internal Revenue Service Center
RECIPIENT'S name		5 Distribution is from: • Qualified tuition program— Private ☐ or State ☐ • Coverdell ESA ☐	6 Check if the recipient is not the designated beneficiary ☐	File with Form 1096.
Street address (including apt. no.)				For Privacy Act and Paperwork Reduction Act Notice, see the 2018 General Instructions for Certain Information Returns.
City or town, state or province, country, and ZIP or foreign postal code				
Account number (see instructions)				

Form 1099-Q Cat. No. 32223J www.irs.gov/Form1099Q Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

The Form 1099-Q is prepared using the name and social security number of the CESA's designated beneficiary. This is the person whom the CESA is intended to benefit.

On the Form 1099-R, box 7 must generally be completed with one distribution code. If more than one distribution code applies to a person, a separate Form 1099-R must be prepared. On the Form 1099-Q, the CESA custodian may, but is not required to include a distribution code in the blank box below boxes 5 and 6. This means only one Form 1099-Q is required to be prepared to report all of the CESA Distributions.

However, the IRS does ask that in at least three cases, separate forms be prepared. First, the IRS would like the CESA custodian/trustee to prepare a separate Form 1099-Q if an excess contribution was made and withdrawn. Secondly, the CESA custodian/trustee should file a separate Form 1099-Q for any (each) transfer.

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Form 1099-Q,
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An IRA custodian is not required to prepare a Form 1099-R if the annual distribution amount for person is less than $10. Although there probably should be the same rule for a CESA distributions, there is no $10 limit for CESA Distributions. All CESA distributions must be reported.

If a CESA custodian prepares more than one Form 1099-Q for the same recipient, then the CESA must complete the account number box with a unique account number for that person. As with IRAs, the IRS would like the custodian/trustee to insert an account number in the account number box even though it is not mandatory.

And unlike with IRAs where a transfer distribution is not reported on the Form 1099-R, a transfer distribution must be reported on the Form 1099-Q.

Box 1 reports the gross distribution amount paid to the designated beneficiary or a beneficiary. The distribution may be made with cash or with some property. This amount will be the sum of the account's basis (see box 3) and the earnings. (box 2).

Box 3 shows the basis within the CESA if the CESA custodian has elected to report such basis. However, the IRS has given the CESA custodian the option of leaving box 3 and box 2 blank.

If this option is elected, and most financial institutions elect this option, the custodian must report the fair market value (FMV) as of the end of the year in the blank box below boxes 5 and 6. The amount must be labeled FMV. It will then be the designated beneficiary and his or her accountant that determine what portion of the distribution is basis and earnings.

Box 2 is used to report the earnings if the CESA custodian has elected to report such earnings. However, the IRS has given the CESA the option of leaving box 2 bank as discussed above and most custodians have elected this option. Box 2 is generally left blank. And then it will be up to the designated beneficiary and his or her accountant to determine what portion of the distribution is basis and earings.

The distribution of earnings may or may not be taxable. Earnings used to pay qualified education expenses will be tax-free. Earnings withdrawn and used for reasons other than paying the qualified education expenses of the designated beneficiary will be taxable and possibly subject to the 10% penalty tax. Earnings are NOT subject to backup withholding.

If the CESA has incurred a loss (i.e. negative earnings) and the CESA is not closed this year, then enter 0.00 in box 2. Also enter 0.00 if you know that there has been no earnings.

If the CESA has incurred a loss and the CESA is closed this year, then enter a loss in box 2.

There is one time when the IRS asks the CESA custodian to not leave boxes 2 and 3 blank. This is when an excess contribution is withdrawn along with the related earings.

Box 4 contains a checkbox and this box is to be checked to indicate that there has been a trustee-to-trustee transfer. It is to be checked if the CESA distribution is made directly to another CESA (section 530) or to qualified tuition program (section 529). There is no similar box on the Form 1099-R. Box 4 is to be left blank if the CESA custodian does not have records showing that the gross distribution was a trustee-to-trustee transfer.

It appears that if there has been a change in the designated beneficiary, but the new beneficiary is a member of the former beneficiary's family and he or she is under age 30, then this change is not to be reported as a transfer on the Form 1099-Q.

It also appears that if there has been a change is the designated beneficiary, but the new beneficiary is a member of the former beneficiary's family but he or she is age 30 or older, then this change is to be reported as a transfer on the Form 1099-Q and the recipient will need to include the income in his or her income.

It also appears that if there has been a change into the designated beneficiary, but th new beneficiary is NOT a member of the former beneficiary's family, then this change is to be reported as a transfer on the Form 1099-Q and the recipient will need to include the income in his or her income.

Box 5 reports the type of plan. check the CESA box. The other two boxes related to the two types of qualified tuition programs.

Box 6. This box must be checked if the distribution was made to a person other than the designated beneficiary. Normally, this will be the case if the funds are paid to a beneficiary who is not a family member of the

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deceased designated beneficiary. Such family members are: his or her spouse; children, stepchildren, foster children, and their descendants; parents, their siblings, ancestors; stepparents; in-laws; and the spouses of such individuals and any first cousin of the designated beneficiary.

The recipient of a CESA distribution will in some cases have to report the CESA distribution on his or her federal income tax return. The IRS instructions to the recipient do state that "nontaxable" distributions from CESAs, including rollover, are not required to be reported on the individual's tax return. See Pub. 970.

Designated Roth Funds Are Eligible to Be Directly Rolled Over to a Roth IRA Or In Some Cases to a Traditional IRA

More individuals are making "Roth" contributions. The tax-free income aspect is enticing. "Roth" contributions may either be made to a Roth IRA or they may be made to a 401(k) plan which allows for designated Roth contributions.

Many employers with 401(k) plans are revising their plans to authorize a participant to make an after-tax elective deferral contribution into a designated Roth account. Many of the employees appreciate being given the opportunity to make elective deferrals to a designated Roth account along with making standard elective deferrals. In some cases the key employees of an employer are ineligible to make annual Roth IRA contributions because of the income restrictions.

When the participant is eligible for a distribution from the 401(k) plan the participant must decide if the entire balance in the designated Roth account will be directly rolled over or if only a portion will be rolled over. If distributed, the earnings portion of a designated Roth account will be tax-free only if the distribution is a qualified distribution.

Almost always the participant will instruct to directly rollover 100% of the distribution to a Roth IRA. However, with respect to the earnings portion of a Designated Roth account a participant may rollover the earnings portion to a traditional IRA rather than a Roth IRA. The person might do this to simplify their tax accounting.

The IRS in May of 2016 adopted a final regulation. The purpose of the regulation was to eliminate the requirement that a disbursement from a designated Roth account that is directly rolled over to a Roth IRA be treated as a separate distribution from any amount paid directly to the participant and therefore separately subject to the pro-rata taxation rule allocating pre-tax and after-tax amounts to each distribution. The new rule is pretax amounts are allocated first to the direct rollover rather than being allocated pro-rata to both distributions. Also, the participant has the right as with other non-designated accounts funds to direct the allocation of pretax and after-tax amounts to a traditional IRA and/or a Roth IRA. If the distribution of the earnings with respect to the designated Roth account would not be qualified, then the participant can choose to directly rollover such portion to a traditional IRA rather than a Roth IRA. We expect most individuals would still decide to have such earnings directly rolled over into a Roth IRA. If such earnings were distributed from the Roth IRA before the individual was eligible for a qualified distribution from the Roth IRA such earnings would be taxable.

What is one practical impact of this change?

For discussion purposes, we will assume that Jane Doe age 37 has $4,470 in a designated Roth account. Of this amount $4,000 is attributable to her elective deferrals and $470 is the earnings portion. She could elect to receive $4,000 in cash to pay-down some credit card balances and she could elect to directly rollover the $470 into her traditional IRA so she would not be required to include the $470 in her income. Alternatively, she could elect to directly rollover the $4,000 into her Roth IRA and she could elect to directly rollover the $470 into her traditional IRA so she would not be required to include the $470 in her income.

By issuing this regulation along with the guidance in Notice 2014-54, the IRS has given an individual great flexibility in withdrawing pretax and post-tax funds from qualified plans, including 401(k) plans with designated Roth accounts. This IRS action allows an individual to simplify the tax accounting for distributions from 401(k) plans.

Expansion of the Saver's Tax Credit and the ABLE Contribution.

Prior to 2018, a third party was eligible to make an ABLE contribution into an ABLE account established for a disabled person if the person became disabled before age 26. The contribution limit is $15,000 for 2018.

Prior to 2018, an individual was eligible to claim the Saver's Tax Credit if he or she made a contribution to a traditional IRA or a Roth IRA or made an elective deferral contribution to a 401(k), 403(b), governmental 457(b), or SIMPLE IRA plan or made voluntary employee contributions to a qualified retirement plan as defined in code section 4974(c), including the federal Thrift Savings plan.

Individuals with disabilities who work are now eligible in 2018 for the Saver's Tax Credit if they otherwise meet the eligibility requirements for this tax credit. The formal title of this tax credit is the "Qualified Retirement Savings Contributions." The Individual claims this credit by completing Form 8880. The IRS has not yet issued the 2018 version which will incorporate the changes made in the law by The Tax Cuts and Jobs Act.

Individuals with disabilities who work are now eligible to make contributions to their ABLE account and claim the Saver's Tax Credit for such contributions. The standard rules apply. The maximum contribution amount to be considered is $2,000. The tax credit for an individual is determined by multiplying the contribution amount by a percentage of 0%, 10%, 20% or 50% depending on his or her filing status and modified adjusted gross income.

The individual's contribution to his or her ABLE account in excess of the $15,000 is limited to the poverty line amount for a one-person household. This amount is $12,140 for a resident of the continental U.S., $13,960 in Hawaii, and $15,180 in Alaska.

The Saver's Credit is a non-refundable credit available to an eligible person who meets the following three requirements: must be 18 years old as of the close of the tax year; is not a dependent or a full time student and must certain income requirements.

Possible HSA Law Changes

In July the U.S. House of Representatives passed two bills containing proposed HSA law changes. In order to become law the U.S. Senate will also need to pass these bills and the President will need to sign. The two bills are: (i) H.R. 6199 - Restoring Access To Medication and Modernizing Health Savings Accounts of 2018 and (ii) H.R. 6311 - Increasing Access To Lower Premium Plans and Expanding Health Savings Accounts of 2018. The law changes would be effective as of January 1, 2019 for the 2019 tax year.

There will be increased demand for HSAs if the proposed law changes become law.

We all need to watch to see if these proposed HSA law changes will become law. The U.S. Senate has indicated such law changes would be included in the bill setting forth the final 2018 budget bill. Set forth is a summary of these two bills.

H.R. 6199 - Restoring Access To Medication and Modernizing Health Savings Accounts of 2018. It was passed by a vote of 277 to 142. As of July 2018 there are 236 Republicans, 193 Democrats, and 6 seats vacant. Note that approximately 40 Democrats voted for this bill.

Current HSA laws require a qualifying HDHP to have a minimum deductible of $1,350 for self-only coverage and $2,700 for family coverage. The minimum deductible requirement would be reduced to $250 for self-only coverage and $500 for family coverage. These amounts are adjusted annually by a cost of living adjustment factor. The minimum deductible requirement applies to certain specified services which by definition does not apply to preventive care services.

Current HSA laws define a person to be HSA ineligible if he or she is covered by any health plan which is not a qualifying HDHP. Special rules would be adopted providing that a person receiving certain health related services would remain HSA eligible.

A person who in connection with the individual's employment or their spouse's employment is still HSA eligible if he or she receives the following items and services at a healthcare facility located within a supermarket, pharmacy, or similar retail entity or a healthcare facility located at a facility owned or leased by the employer or a facility operated primarily for the benefit

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of the employer's employees. Such items include physical examinations, immunizations, hearing or vision screenings, drugs other than a prescribed drug and treatment for injuries occurring in the course of employment, drug testing if required as a condition of employment, and other similar items and services that do not provide significant benefits in the nature of medical care. For purposes of determining if an entity is a qualifying employer, the controlled group rules apply.

Current HSA laws define a person to be HSA ineligible if he or she is covered by any health plan which is not a qualifying HDHP. A person if covered by a certain section 125 plan which covers their spouse would not become HSA ineligible as long as for any plan year the aggregated reimbursements do not exceed the limit applying to the spouse.

There would be new rules governing when a person would have the right to move funds related to the termination or conversion of FSA and HRA funds into an HSA.

The HSA rules would be changed so that menstrual care products will be a qualified medical expense distribution even though a doctor has not issued a medical prescription.

The HSA rules would be changed so that certain amounts paid for physical activity, fitness and exercise are to be treated as amounts paid for medical care. There are two limits. First a $500 limit will apply to qualified sports and fitness expenses. Second, a $250 limit on safety equipment. The $500 limit is increased to $1,000 for a married couple filing a joint return or a person whose filing status is head of household.

H.R. 6311- Increasing Access To Lower Premium Plans and Expanding Health Savings Accounts of 2018. It was passed by a vote of 242 to 176. As of July 2018 there are 236 Republicans, 193 Democrats, and 6 seats vacant. Note that this vote was virtually along party lines and that 17 representatives (mostly Democrats) did not vote.

Under current HSA rules a person becomes HSA ineligible once he or she enrolls in Medicare. Enrollment in any Medicare program makes one HSA ineligible. The rules would be changed so that a person remains HSA eligible even though the person has enrolled in Part A of Medicare (hospital expenses). A person who commences his or her social security benefits is sometimes automatically enrolled by the federal government in Part A.

Current law limits the annual amount which can be contributed into an eligible person's HSA. The limits under existing law are as follows:

	2018	2019
Self-only under age 55	$3,450	$3,500
Self only age 55 or over	$4,450	$4,500
Family under age 55	$6,900	$7,000
Family age 55 or over	$7,900	$8,000

The new law would increase these maximum contribution limits for 2019 to be the maximum out of pocket expense limit. This is an increase of 80-90%.

	Current Law	Proposed Law
Self-only under age 55	$3,500	$6,750
Self only age 55 or over	$4,500	$7,550
Family under age 55	$7,000	$13,500
Family age 55 or over	$8,000	$14,500

Under current HSA laws, a married person who is eligible to make an HSA catch-up contribution must make such contribution to their own HSA. That is, a spouse is not permitted to make their $1,000 contribution into their spouse's HSA. This law change would allow one or both HSA contributions to be made to either spouse's HSA.

Under current HSA laws the IRS has adopted the administrative rule that a medical expenses can qualify as a qualified medical expenses only if the medical expense is incurred after a person has established his or her HSA. The IRS created this requirement. The law change would modify this requirement by granting the person a 60 day grace period to establish their HSA and if so done, the medical expense incurred before establishing the HSA will still qualify as a qualified medical expenses. The 60 day grace period commences on the date the coverage begins under the qualifying HDHP.

Under current law, a bronze health plan and/or a catastrophic plan do not qualify as a qualifying HDHP for HSA purposes. The laws would be changed so that a person who has coverage under a bronze health plan or a catastrophic plan would be eligible to make HSA contributions.

Federal elections will occur in November of 2018. The fate of these proposed law changes will be determined by the results of such elections. If the Republicans retain control of the U.S. Senate, many of these proposed law changes will become law regardless if the Democrats regain of the U.S. House of Representatives.

Correction of the May 2018 Newsletter Article - IRS Issues New Guidance on Withholding and the IRS Reporting Duties For IRA Distributions Sent to a State Unclaimed Property Fund

We recently sent the following response to an IRA custodian's question regarding the referenced article.

The IRS issued its tax guidance on when an IRA custodian sends to the state's unclaimed property fund a dormant IRA. See the attached IRS Rev. Rule 2018-17.

The IRS author discusses a factual situation concerned with a traditional IRA. The IRS does not discuss to any extent the tax consequences and tax reporting to be done if the IRA is a SIMPLE IRA, SEP IRA or Roth IRA or whether or not such funds must be remitted to the state's unclaimed property fund.

See the highlighted portion. I read this provision as providing the new reporting rules only applied to traditional IRAs and not to the other three types of IRAs. I was wrong. The IRS is stating its guidance applies to a traditional IRA which is sent to the state's unclaimed property fund. The IRS provides no guidance regarding the other 3 types of IRAs.

This is a topic which we are going to have to research further.

I expect states are adopting laws and procedures requiring dormant funds of all IRAs to be remitted to the state's unclaimed property fund.

With respect to SEP IRAs and SIMPLE IRAs I expect the rules applying for traditional IRAs will also apply to SEP-IRAs and SIMPLE-IRAs (the funds must be remitted to the state's unclaimed property fund and 10% will have to be withheld and paid to the IRS). There is one major exception. If the SEP-IRA or the SIMPLE IRA originated with respect to a plan covering multiple individuals, then ERISA applies to these IRAs and such funds cannot be sent by the bank to the state's unclaimed property fund unless the DOL and IRS adopt a special rule stating that after a certain time period ERISA no longer applies to a SEP-IRA or a SIMPLE-IRA. The DOL and the IRS have issued no guidance on this topic and will need to issue guidance on this subject. A bank may need to go to court to have a judge rule on this issue.

With respect to Roth IRAs, I presume the states will adopt aggressive rules requiring these funds be remitted as the 70 1/2 rule does not apply. Presumably, the IRS will adopt the position that a Roth IRA no longer exists if the funds are remitted to the state's unclaimed property fund.

Designating a Responsible Individual For an Inheriting IRA Beneficiary

There are no special RMD rules just because the beneficiary is a minor. All inherited IRAs must comply with the required distribution laws. Required distributions must be made to the beneficiary in the proper amount or the 50% excess accumulations tax will apply.

An IRA owner who has designated a minor child as an IRA beneficiary may wish to designate a person to be a responsible individual for such a minor and act on behalf of the child until the child reaches the age of majority.

An IRA owner who has designated an adult child who is a spendthrift as an IRA beneficiary may wish to designate a person to be a responsible individual for such adult child.

CWF has created Form IRA #45-IRA. This form is an amendment to the IRA plan agreement. It authorizes the designation of a responsible individual (a person to act on behalf of the beneficiary).

Form IRA #45-IRA has not yet been added to our IRA Form System. It will be included in the next update. Contact us if you wish to be sent a copy of this form.