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ALSO IN THIS ISSUE –

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Explanation For IRA Clients Wanting a Transfer Incident to a Divorce

A person losing or gaining IRA funds pursuant to a divorce should understand the tax related rules.

Internal Code section 408(d)(6) provides that a transfer pursuant to a divorce is a tax-free transaction. If there is not such a transfer, but there is an actual distribution from a spouse's IRA and the funds go to the other spouse, the person who is the IRA owner must include the distribution in their income, and if under age 59 1/2, will also owe the additional 10% tax. Tax is not owed by the ex-spouse receiving the IRA funds.

In order to have a transfer incident to a divorce there must be a court order (copy required to be furnished) stipulating that there is to be transfer of a defined amount from the IRA of the IRA owner to the IRA of the ex-spouse.

Presumably, both individuals (but especially the IRA owner) will agree that the movement of IRA funds from one ex-spouse to the other should be a transfer from the IRA owner's IRA to an IRA established for the ex-spouse.

The ex-spouse must have an IRA with an IRA custodian which will receive or accept such transfer. The IRA can be an existing one or it can be a newly established one. Promising to set up such an IRA is insufficient.

For example, Jane Doe has a traditional IRA #1 with IRA custodian #A with a balance of $42,000. The court order instructs that $30,000 is to be transferred to the traditional IRA belonging to John Doe, the ex-spouse.

Generally, John Doe will decide to establish his traditional IRA with IRA custodian #A. He will need to satisfy the CIP (customer identification) rules, if applicable. In fact, IRA custodian #A could require that he establish his IRA with IRA custodian #A. There is no federal tax law requiring an IRA custodian to participate in an IRA transfer, be it a regular transfer or a transfer incident to a divorce.

Sometimes, John Doe doesn't want to establish an IRA with IRA custodian #A because he wants his IRA to be with IRA custodian #B. He can request IRA custodian # (he cannot require or demand) if it would be willing to transfer funds from Jane Doe's IRA to his IRA with IRA custodian #B. He (or IRA custodian #B) would furnish the attached special transfer form to IRA custodian #A. This special transfer form authorizes the transfer between the IRAs of the ex-spouses. The two individuals and the two IRA custodians would sign this transfer form.

One would think most IRA custodians would agree to do the special transfer because it will save them the work of having to set up his IRA and then presumably close it because he will instruct to have it transferred. Custodian #A may charge a reasonable transfer fee.

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SIMPLE-IRA Summary Description — IRA Custodian Must Furnish to its SIMPLE-IRA clients by September/ October 2019 for 2020

What are a financial institution's duties if it is the custodian or trustee of SIMPLE-IRA funds? After a SIMPLE-IRA has been established at an institution, it is the institution's duty to provide a Summary Description each year within a reasonable period of time before the employees' 60-day election period. CWF believes that providing the Summary Description 30 days prior to the election period would be considered "reasonable." The actual IRS wording is that the Summary Description must be provided "early enough so that the employer can meet its notice obligation." You will want to furnish the Summary Description to the employer in September or the first week of October. The employer is required to furnish the summary description before the employees' 60-day election period.

IRS Notice 98-4 provides the rules and procedures for SIMPLEs. This notice is reproduced in CWF's IRA Procedures Manual.

The Summary Description to be furnished by the SIMPLE-IRA custodian/trustee to the sponsoring employer depends upon what form the employer used to establish the SIMPLE-IRA plan.

The employer may complete either Form 5305-SIMPLE (where all employees' SIMPLE-IRAs are established at the same employer-designated financial institution) or Form 5304-SIMPLE (where the employer allows the employees to establish the SIMPLE-IRA at the financial institution of his or her choice).

There will be one Summary Description if the employer has used the 5305-SIMPLE form. There will be another Summary Description if the employer has used the 5304-SIMPLE form. If you are a user of CWF forms, these forms will be Form 918-A and 918-B.

The general rule is that the SIMPLE-IRA custodian/trustee is required to furnish the summary description to the employer. This Summary Description will only be partially completed. The employer will be required to complete it and then furnish it to his employees. The employer needs to indicate for the upcoming 2017 year the rate of its matching contribution or that it will be making the non-elective contribution equal to 2% of compensation.

In the situation where the employer has completed the Form 5304-SIMPLE, the IRS understands that many times the SIMPLE-IRA custodian/trustee will have a minimal relationship with the employer. It may well be that only one employee of the employer establishes a SIMPLE-IRA with a financial institution. In this situation, the IRS allows the financial institution to comply with the Summary Description rules by using an alternative method.

To comply with the alternative method, the SIMPLE-IRA custodian/trustee is to furnish the individual SIMPLE-IRA accountholder the following:

- A current 5304-SIMPLE — this could be filled out by the employer, or it could be the blank form
- Instructions for the 5304-SIMPLE
- Information for completing Article VI (Procedures for withdrawal) (You will need to provide a memo explaining these procedures.)
- The financial institution's name and address.

Obviously, if an institution provides the employee with a blank form, he/she will need to have the employer complete it, and, the employee may well need to remind the employer that it needs to provide the form to all eligible employees.

CWF has created a form which covers the "alternative" approach of the Summary Description being provided directly to an employee.

<u>The penalty for not furnishing the Summary Description is $50 per day.</u>

Special Rule for a "transfer" SIMPLE-IRA.

There is also what is termed a "transfer" SIMPLE-IRA. If your institution has accepted a transfer SIMPLE-IRA, and there have been no current employer contributions, then there is no duty to furnish the Summary Description.

If there is the expectation that future contributions will be made to this transfer SIMPLE-IRA, then the institution will have the duty to furnish the Summary Description.

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SIMPLE-IRA Summary,
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Reminder of Additional Reporting Requirements

The custodian/trustee must provide each SIMPLE-IRA account holder with a statement by January 31, 2020, showing the account balance as of December 31, 2019, (this contribution and distribution is the same as for the traditional IRA), and include the specific contribution activity in the account during the calendar year (this is not required for a traditional IRA). There is also a $50 per day fine for failure to furnish this January FMV statement.

Is it Still Possible to Establish a SIMPLE-IRA Plan for 2019?

Yes, if the sponsoring business has never sponsored a SIMPLE-IRA Plan before and if the business has not made any contributions for 2019 to another type of retirement plan (e.g. profit sharing plan or SEP).

A person or business can set up a SIMPLE-IRA plan effective on any date between January 1 and October 1 of a year, provided it did not previously maintain a SIMPLE-IRA plan. This requirement does not apply if there is a new employer that comes into existence after October 1 of the year the SIMPLE-IRA plan is established. A new business must set up a SIMPLE-IRA plan as soon as administratively feasible after it comes into existence. If it previously maintained a SIMPLE-IRA Plan, it can set up a SIMPLE-IRA plan effective only on January 1 of a year. A SIMPLE-IRA plan cannot have an effective date that is before the date you actually adopt the plan.

SIMPLE-IRA Fees May be Charged Good Notices and Timing are Needed

The IRS has written two model SIMPLE-IRA forms. One (Form 5305-SIMPLE) provides for a designated financial institution and other (Form 5304-SIMPLE) does not.

An employer may choose to complete Form 5305-SIMPLE because it allows the employer to designate a particular financial institution to which all SIMPLE-IRA contributions will be made. This right greatly reduces the employer's administrative tasks of having to make contributions at multiple financial institutions. An employer which sponsors a SEP does not have such a right. Each employee can have his or her SEP-IRA set up with the financial institution of its choice. These requirements must be met in order for there to be a designated financial institution:

1. The employer and the financial institution must agree in writing the financial institution will be the designated financial institution (DFI).
2. Upon a participant's request his or her SIMPLE-IRA balance will be transferred without cost or penalty to another SIMPLE-IRA or to any IRA once 24-months have elapsed since the date of the first SIMPLE-IRA contribution.
3. Each participant must be furnished a notice explaining the procedures which must be used in order that the SIMPLE-IRA balance will be transferred without cost or penalty.

If a financial institution is not a DFI, then it is free to impose a reasonable fee with respect to transferring funds from the SIMPLE-IRA to another SIMPLE-IRA or any IRA if the 2-year requirement has been met.

The general rule is – if a financial institution is a DFI, it is unable to impose any fee and/or cost for transferring funds from the SIMPLE-IRA to another SIMPLE-IRA or any IRA if the 2-year requirement has been met. Code section 408(p)(7) states this requirement. "A transfer is deemed to be made without cost or penalty if no liquidation, transaction redemption or termination fee, or any commission, load (whether front-end or back-end) or surrender charge, or similar fee or charge is imposed with respect to the balance being transferred.

Note that this rule does not prevent the imposition of fees for any non-transfer transaction. For example, if the SIMPLE-IRA accountholder wanted to take a distribution, the SIMPLE-IRA custodian could impose a distribution fee, or if the SIMPLE-IRA accountholder would close his or her SIMPLE-IRA, the financial institution could impose a closing fee. This restriction of fees applies once the employee has notified the custodian the he or she will be exercising their rights under the transfer policy.

The DFI will need to settle on its fee policies and write a notice explaining such policies and procedures. The DFI should furnish this notice to both the employer and

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SIMPLE-IRA Fees,
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the employees. It could be an attached summary description which the DFI furnishes the employer.

In 1998 in Notice 98-4 the IRS created and announced some major exceptions to this no fee for transfers requirement.

Exception #1. The financial institution may impose transfer fees as long as SIMPLE-IRA participants are given a reasonable time in which to accomplish a transfer without cost or penalty. If a participant fails to do the transfer during this period, then fees and costs may be imposed for transfers during other time periods.

An employer is required to furnish the eligible employees a summary description for 2020 during the period a reasonable amount of time before their election period of November 2, 2019 to December 31, 2019.

The IRS has concluded that this same 60-day election period may apply for the transfer rules. That is, the employee during this period must instruct the employer and the DFI that he or she will be transferring their 2019 contributions. No fee would be charged for a transfer during this period.

IRS rules require that the time period during which transfers may be made without cost or penalty must be reasonable. The IRS has said that limiting the free transfer period to the same standard 60-day period is reasonable. For existing employees, the standard 60-day period is November 2, 2019 to December 31, 2019. For a newly hired employee in 2020, the 60-day period would start on the day he or she becomes eligible for the SIMPLE-IRA plan. Of course, the DFI could define the period for transfers without any cost as being longer than 60-days, but a 60-day period is compliant.

Exception #2. The restriction on charging fees for a transfer of SIMPLE-IRA funds applies to the contributions to be made in 2020, but does not apply to the funds comprising the SIMPLE-IRA as of December 31, 2019. That is, the DFI may impose transfer fees to the extent existing balances would be transferred.

Exception #3. Although the DFI may not assess an employee any fee with respect to a transfer, the DFI and the employee may enter into an agreement that the employer shall pay such fee(s).

Exception #4. If the DFI charges an annual administration fee to all of its IRAs, including its SIMPLE-IRAs, the imposition of this administration fee does not violate the no fee for transfer rules.

If an employee instructs that he or she wishes to have his or her 2020 SIMPLE-IRA contributions transferred, then the SIMPLE-IRA custodian must do so on a reasonably frequent basis. The IRS has stated that "at least monthly" is deemed to be a reasonably frequent basis. Again, the SIMPLE-IRA custodian could decide to transfer the funds on a per payroll basis.

If an employee instructs that he or she wishes to have his or her 2020 SIMPLE-IRA contributions transferred, then the SIMPLE-IRA custodian is permitted to restrict how such contributions may be invested before being transferred. Such investment must have no sales charge. There only needs to be one limited investment.

In summary, many financial institutions performing SIMPLE-IRA services wrongly believe that fees cannot be charged on SIMPLE-IRAs The only time there is a legal restriction on fees for SIMPLE-IRAs is when the employer has chosen one financial institution to act as the designated financial institution. And then the restriction applies only to certain transfers. As discussed above, the IRS has created a number of exceptions allowing for fees to be charged in some transfer situations.

Transfer,
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If IRA custodian #A will not agree to do this special transfer, John's only recourse is, set up his IRA with IRA custodian #A and then instruct that it be transferred to IRA custodian #B. A standard IRA transfer form would be completed. Custodian #A may charge a reasonable transfer fee.

Email Guidance – Revisiting the Hard-to-Value Topic

An IRA trustee called to discuss a difficult situation. IRAs comprised of hard to value assets have administrative concerns that regular IRAs do not have. The bank has 4 IRAs where the IRA owners in previous years instructed the bank as an IRA custodian to invest a portion of their IRA in a closely held corporation. Stock certificates were issued showing the IRA as the stock owner. In prior years the bank was furnished a letter setting forth the stock value as of December 31 so that the respective IRA's FMV could be determined.

It is not clear to me who was or is this person furnishing the valuation information. What relationship did this person have to the issuing corporation?

The bank as the IRA custodian was furnished this value for 12/31/2017, but you have not been furnished this information for 12/31/2018. You also mention that in 3-4 years one or more of the IRA owners will be subject to the RMD rules.

I understood that the 2018 Form 5498 forms for these 4 IRA owners have not yet been prepared setting forth their respective 12/31/18 fair market values.

The IRS has issued guidance and instructions that an IRA custodian/trustee has the legal duty to determine and report an IRA's FMV as of December 31st of each year and to determine and report the FMV at the time of distribution of any asset which is distributed in-kind to an IRA owner or an IRA beneficiary. Of these two duties, determining the value of a hard to value asset at the time of an in-kind distribution is the more important of the two duties, but both are important.

The IRS can assess a fine against the bank for an incorrect Form 5498. In general, the fine is $100 for each Form 5498 prepared incorrectly. Why $100? The IRA custodian must furnish both the IRS and the IRA owner a correct 5498 form and there is a $50 penalty for failing to do so.

In some situations this $100 penalty might be viewed as an acceptable cost of doing business since the bank might expend much larger amounts in making the determination. Note, this penalty is much less than the penalty the IRS can assess for preparing an incorrect Form 1099-R. I expect the IRS would try to argue somehow that there is some authority which would allow to impose a fine larger than $100 if it concluded the IRA custodian/trustee did not make a good faith effort to determine the fair market value.

In my opinion an IRA custodian has the duty to make a good faith effort to determine an the value of each hard to value asset each year. When necessary, the bank should hire a professional to assist with this task. The IRA owner should agree up front that there could be such fees and that such fees will be paid from the IRA assets. As discussed below I would like to think the IRS would allow some reasonable procedures to be adopted.

With respect to the four 2018 5498 forms the bank is considering:

1. Reporting/using the same per share value for 12/31/2018 which was used for 2017;
2. Determine and report a revised value for 12/31/2018; and
3. Resigning as the IRA custodian/trustee.

I believe you should determine a FMV for 12/31/2018 which is different than the value for 12/31/2017.

I suggest the bank considered hiring an accountant independent of the business to determine the values of each of the 4 IRAs? I believe the IRA plan agreement forms support the bank being able to be reimbursed for these special accounting fees. I would think the 4 IRA owners should be willing to assist in providing information so the determination can be made. The accountant of the business can furnish his or her determination of value, but an IRA trustee must make its own determination of value.

You indicated that the business owner's uncooperativeness might be because he or she is uncertain as to how the bank might react because loan payments are possibly in default and how the 4 shareholders might react.

The bank will want to seriously consider resigning as the IRA custodian/trustee unless an improved method is implemented for determining such value. Even if the bank resigns you have the duty to determine the value as of 12/31/2018.

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Hard-to-Value,
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The discussion below discusses how the valuation topic impacts the taxation topic and the reporting topic.

Determining an asset's or an investment's fair market value is an important subject and it is a complicated subject. Valuations are complicated. As with many tax situations, IRS guidance is not as comprehensive as it should be. When and why is it important to determine an IRA's FMV as of December 31?

When an IRA owner withdraws funds/assets from his or her traditional IRA, SEP IRA and/or SIMPLE-IRA, the individual is required to include the distribution in their income unless there is a reason why the person should not have to include it in income. One such reason is, if the person did not claim a tax deduction for any contribution, then the withdrawal of such contribution is not to be included in income. A person who has made a non-deductible contribution has "basis" to that extent. Basis is withdrawn tax free.

Most IRA owners have never made a non-deductible contribution and have no basis within their IRA. This means 100% of any withdrawal must be included in income regardless of their IRA's FMV as of December 31. That is, even though FMV information is furnished it is not used by the person to prepare their tax return. My guess is that 70-80% of IRA owners have no basis in a traditional IRA, SEP IRA or SIMPLE-IRA.

The other 20-30% do have basis. They may need the FMV information to determine the taxable and non-taxable portions of an IRA distribution.

Some IRA owners have made non-deductible contributions and/or have basis within a traditional IRA. The tax laws as currently written for distributions from a traditional IRA, SEP IRA or SIMPLE-IRA do not allow the person to withdraw 100% of their nondeductible contributions before withdrawing the taxable portion as is the case for withdrawing Roth IRA contributions; rather under a pro-rate rule the law defines that a certain portion will need to be included in income and the other portion need not be included in income. Remember the IRA taxation rules require a person to aggregate the balances of all of their IRAs (traditional, SEP and SIMPLE) before applying the pro-rate taxation rule. For example, Jane Doe has a traditional IRA with IRA custodian #1 with a balance of $30,000, a SEP IRA with IRA custodian #2 with a balance of $15,000, and a SIMPLE-IRA with IRA custodian #3 with a balance of $5,000. Jane Doe has basis of $10,000 in IRA #1. If she withdraws $4,000 from her SEP-IRA, she must include $3200 in her income since her taxable ratio is $40,000/$50,000 x $4,000 or $3,200. She is not required to include $800 in her income as that is the portion of her non-deductible contributions.

Note that IRA custodians #1, 2 and 3 all have the duty to report the IRAs FMV as of December 31 and in many cases they will have no idea if Jane Doe has an IRA or IRAs with other IRA custodians or whether any such IRA contains basis.

I suggest asking your 4 IRA owners if they have any other IRAs (traditional, SEP or SIMPLE) with basis. Again, the FMV information is not used by any IRA owner who does not have any IRA basis.

So, an IRA owner younger than age 70 1/2 who has no basis within any IRAs does not use the FMV information for any current year tax calculation or other reporting requirement.

However, when an IRA owner is subject to the RMD rules (age 70 1/2 or older) it is very important to know the value as of December 31 as the RMD formula is: 2019 RMD = IRA FMV as of 12/31/2018 divided by the factor from the uniform lifetime table.

The tax laws impose a 50% excise tax when a person fails to withdraw that year's RMD. For example, John Doe's IRA is comprised of 10,000 shares of ABC stock. The IRA trustee determines the share value to be $40 per share. He is age 72. So, his 2019 RMD is $400,000/25.6 or $15,625. If the IRS would conclude the value was $50 per share, then his RMD is $19,531.25 ($500,000 / 25.6). His under-distribution RMD amount is $3906.25 and he owes a 50% tax of $1953.12 plus interest and penalties, if applicable.

Although an IRA custodian/trustee is to determine the FMV, an individual will still have the opportunity when filing their tax return to explain why they have completed their tax return using a different value. The IRS has furnished no guidance on this situation.

In summary, an IRA custodian is required to determine and report an IRA fair market value. However, I believe as long as there has been a good faith effort to determine this value the IRS should not be able to

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impose any substantial fine on the IRA custodian. An IRA custodian/trustee and an IRA owner want to agree in writing before a hard to value asset is purchased what process is to be used to determine such value. There certainly should be an express fee for this task.

Rollovers To and From a Section 457(b) Plan Versus a 457(f) Plan

A section 457(b) plan is very similar to a 401 (k) or 403(b) plan. It allows an employee to defer a portion of their income into a tax favored plan. Most employees appreciate the opportunity to defer a portion of their income under a tax-favored retirement plan. It does not matter if the employee works for a private employer, a governmental entity or a tax exempt entity.

U.S. tax laws are complex for many reasons. With respect to retirement plans the same rules do not apply to every plan. That is, some plan types (and their participants) are bestowed special tax benefits other plans do not receive. Such is the case with respect to retirement plans where there are three different Code sections, 401, 403 and 457 set forth differing retirement plan rules.

A person's right to defer taxation of a plan distribution by making a rollover contribution is a very valued tax benefit. The law limits which plans and which participants are eligible to make a rollover contribution. See the IRS rollover chart as set forth on page _

For example, a person is unable to rollover the following types of deferred compensation: an employer plan covering bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay or a death benefit plan. A participant of a section 457(b) plan is able to rollover such funds into an IRA or other tax qualified plan as participants of a 401(k) plan or 403(b) plan can do. A qualifying section 457(b) plan is one which is an eligible deferred compensation plan as described in section 457(b) and which is maintained by an employer described in section 457(e)(1)(A).

However, participants of certain 457 plans are ineligible to make such rollovers. These non-qualifying section 457 plans are called section 457(f) plans. In general, a section 457 plan is one sponsored by a non-governmental entity such as a charity or a non-profit which has as its participants only highly compensation employees.

As with 401(k) plans and 403(b) plans, the sponsoring employer of a section 457 plan has the duty to furnish a plan participant with the equivalent of a section 402(f) notice informing the person whether or not his or her withdrawal from the 457 plan is eligible to be rolled over or ineligible to be rolled over.

As with distributions/rollovers from 401(k) plans and 403(b) plans, an IRA custodian should ask the section 457 participant (i.e its IRA client) to furnish it with a copy of the sponsoring employer's distribution form stating the funds are eligible to be rolled over into an IRA.

Code section 401(a) sets forth the rules for private employers. The title of Code section 401 is Qualified Pension, Profit Sharing and Stock Bonus Plans.

Code section 403 sets forth the rules for private employers who purchase annuity contracts for its employees. The title of Code section 403(b) is Taxability of Beneficiary Under Annuity Purchased by Section 501 (c)(3) Organization or Public School. Sponsoring employers are primarily school districts and hospitals where the retirements are funded with insurance company products or mutual fund products.

Code section 457 sets forth the rules for governmental plans and for tax exempt entities. The title of Code section 457 The title of Code section 457 is Deferred Compensation Plans of State and Local Governments and Tax-Exempt Organizations.

In summary, the standard rollover rules apply with respect to a distribution from a section 457(b) plan if the 457(b) plan of the governmental entity or tax exempt entity is an eligible deferred compensation plan. If not, the standard rollovers do not apply and the person is ineligible to rollover such distribution. The sponsoring employer must inform a participant whether their distribution is eligible to be rolled over or not.

ROLLOVER CHART

	Roll To							
Roll From	**Roth IRA**	**Traditional IRA**	**SIMPLE IRA**	**SEP-IRA**	**Governmental 457(b)**	**Qualified Plan[1]** (pre-tax)	**403(b)** (pre-tax)	**Designated Roth Account** (401(k), 403(b) or 457(b))
Roth IRA	Yes[2]	No	No	No	No	No	No	No
Traditional IRA	Yes[3]	Yes[2]	Yes[2, 7], after two years	Yes[2]	Yes[4]	Yes	Yes	No
SIMPLE IRA	Yes[3], after two years	Yes[2], after two years	Yes[2]	Yes[2], after two years	Yes[4], after two years	Yes, after two years	Yes, after two years	No
SEP-IRA	Yes[3]	Yes[2]	Yes[2, 7], after two years	Yes[2]	Yes[4]	Yes	Yes	No
Governmental 457(b)	Yes[3]	Yes	Yes[7], after two years	Yes	Yes	Yes	Yes	Yes[3,5]
Qualified Plan[1] (pre-tax)	Yes[3]	Yes	Yes[7], after two years`	Yes	Yes[4]	Yes	Yes	Yes[3,5]
403(b) (pre-tax)	Yes[3]	Yes	Yes[7], after two years	Yes	Yes[4]	Yes	Yes	Yes[3,5]
Designated Roth Account (401(k), 403(b) or 457(b))	Yes	No	No	No	No	No	No	Yes[6]

[1]Qualified plans include, for example, profit-sharing, 401(k), money purchase, and defined benefit plans.
[2] Only one rollover in any 12-month period.
[3]Must include in income.
[4]Must have separate accounts.
[5]Must be an in-plan rollover.
[6]Any nontaxable amounts distributed must be rolled over by direct trustee-to-trustee transfer.
[7]Applies to rollover contributions after December 18, 2015. For more information regarding retirement plans and rollovers, visit Tax Information for Retirement Plans.