THE Pension Digest

October 2019
Published Since 1984

ALSO IN THIS ISSUE –

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

January 31, 2020 Deadline

January 31, 2020 is a Friday so the deadline for furnishing required IRA forms is January 31, 2020. An IRA custodian/trustee must furnish (i.e. mail, email, fax or personally deliver) the following to its IRA accountholders and its inheriting IRA beneficiaries. If this deadline would be missed, the IRS may assess the fines as discussed in the article.

2019 Form 1099-R

Any person (accountholder or beneficiary) who receives a distribution(s) from an IRA during 2019 totaling more than $10 for the year must be furnished a 2019 Form 1099-R. And the IRS must be furnished its copy.

This Form 1099-R must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA, then he or she would need to be furnished three Form 1099-Rs. In addition, there must be a Form 1099-R prepared for each applicable distribution code. For example, if a person has traditional IRA and one distribution required the use of Code "1", one the use of code "3" and one the use of Code "7", then three Form 1099-Rs must be furnished.

When an individual receives more than one copy of the Form 1099-R, then it is mandatory for the IRA custodian/trustee to insert a unique number in the account number box located in the lower left hand corner of the form. Even though there will be times when furnishing this account number is not required, the IRS encourages IRA custodian/s trustees to voluntarily furnish it. This account number allows the IRS to process the submissions of any corrected forms.

If the IRA custodian fails to timely furnish a 2019 Form 1099-R or furnishes one prepared with errors due to its errors, then the IRS may assess a fine of $270 for the incorrect form furnished the individual and another $270 for the incorrect form furnished the IRS.

Fair Market Value (FMV) statements

An IRA custodian must furnish a FMV statement to each IRA accountholder and each inheriting beneficiary having a balance as of December 31, 2019, to each IRA accountholder who died during 2019, and to any IRA accountholder who made a reportable contribution for 2019 during 2019. The deadline to furnish the FMV statement is January 31, 2020.

This FMV statement must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA, then he or she would need to be furnished three FMV statements these could be combined onto one statement as long as there were three separate sections on the statement.

There must be a sentence on the statement informing the recipient that the FMV information (Balance as of December 31) will be furnished to the IRS when the 2019 Form 5498 will be filed with the IRS in May of 2020.

The IRA custodian/trustee may, but is not required, to furnish contribution and earnings (including interest) information

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Can a Donor Impose Restrictions on a QCD?

The right of an IRA grantor to make a qualified charitable distribution is a very valuable tax right. The distribution is tax-free. Internal Revenue Code section 408(d)(8)(A) provides a QCD shall not be includible in the IRA grantor's gross income as long as it does not exceed $100,000.

In 2007 the IRS issued guidance in Notice 2007-7. Without any statutory authority the IRS expanded the tax benefits of a QCD by stating in Q & A-42 that a QCD could be taken into account when determining if the RMD rules,have been satisfied.

Additional IRS guidance on QCDs has been minimal. See the discussion in Publication 590-B (IRA Distributions) and Publication 526 (Charitable Contributions).

An IRA representative has asked, to what degree, if any, does an IRA grantor have the legal right to impose a restriction with respect to the QCD they make to a qualifying charity. The restrictions are described as being general and not specific.

In order to qualify as a QCD, the entire distribution must be eligible to be deducted under section 170, but for the special QCD rules.

Under other federal tax laws, a person is eligible to claim a tax deduction on their federal income tax return even if the person has imposed certain restrictions on the gift made to a charity. Certain IRS tax rules must be met and these rules are complicated. As with the prohibited transaction rules, a person is ineligible to deduct the amount of their gift if they or a family member or a controlled business benefit from their gift. And a gift cannot be directed to benefit a specific person.

A person's restricted gift to a charity made for general or public purposes is deductible as long as it is for the charity's tax exempt purpose. Creating an endowment fund for a school or college or a department of a school or college qualifies. Contributing funds to the Red Cross for a specific disaster area will qualify or a specific program or campaign of the United Way.

Certain restrictions will not disqualify a gift to a charity from being deductible and others will. CWF believes the same concept(s) apply to QCDs, but the IRS has never stated this.

The following charities are not qualifying charities for QCD purposes: donor advised funds, private foundations and those charities providing support services for other charities. However, the law provides that certain donor advised funds are not to be treated as a donor advised fund if certain requirements are met.

Until the IRS issues additional guidance on this subject, we believe an IRA grantor is eligible to impose general restrictions on their QCD. We also believe an IRA grantor should be willing to acknowledge the law is unsettled as to when a restriction crosses the line and agree to accept responsibility if the IRS would decide that the person's distribution did not qualify as a QCD. That is, the distribution would be taxable rather than being tax-free.

See Q-44 & A-44 of Notice 2007-7 wherein the IRS indicates that the DOL's position is that a prohibited transaction does occur when a QCD is made, but it is exempted by Code section 4975(d)(9).

Can a Business Suspend Its SIMPLE-IRA Plan?

No, a SIMPLE-IRA plan must either be active or terminated. It cannot be suspended. This is true even if the sponsoring business is a one person business.

We furnished the following email guidance to an custodian/trustee who had asked what its responsibilities were to an employer which had terminated its SIMPLE-IRA plan.

There are no duties as long as you furnished the 2020 Summary Description. A business must complete the Summary Description to indicate that the SIMPLE-IRA plan is being terminated. Any eligible employees must be notified. Technically, the one person business must furnish this notice to himself or herself.

The IRS has not written special SIMPLE-IRA rules for a one person business. Although the owner of a one person business may think they don't need to comply with the standard SIMPLE-IRA rules, they should if they

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Suspend SIMPLE-IRA
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want to be assured they will get the desired tax benefits.

Our email guidance.

We understand a SIMPLE-IRA plan is either active or it is terminated. There is no such thing as a suspended SIMPLE-IRA plan.

Termination of the SIMPLE-IRA plan means there can be no contributions by anyone, including the owner-employee.

A SIMPLE-IRA plan can only be terminated as of December 31, unless the business would cease to exist before then.

The fact that employees do not exercise their right to defer (i.e choose to defer 0.00) does not mean the plan is terminated. An employer is still permitted to make the 2% non-elective contribution if it has completed its summary description accordingly. Remember the 2% is given to every eligible participant regardless of any deferral. The fact that no employee, including the owner, makes no elective deferral does not mean the plan is not active or is terminated.

The fact that eligible employees are not deferring does not eliminate an employer's duty to furnish the summary description for the upcoming year.

If an employer will be terminating its SIMPLE-IRA plan as of 12/31/19, it must notify the employees.

The fact that a business has terminated its SIMPLE-IRA plan does not mean the individual can no longer maintain their SIMPLE-IRA. The SIMPLE-IRA will continue to exist as long as the person wants to maintain it as a SIMPLE-IRA. At some point the individual may decide to transfer it into a traditional IRA.

HSA Contributions and Balances Continue to Grow Data As of 12/31/2018

There are now 25 million HSAs in 2018. It is estimated there will be 30 million HSA accounts in 2020. In 2014 there were 12 million HSAs. There are on average approximately 2.2 million new accounts added ever year since 2010.

In comparison, there are 60 million IRAs.

HSAs had assets of $54 billion as of 12/31/18 totaled $54 billion, with 43 million in standard DOA or checking accounts and 11 billion in investments.

It is estimated that HSAs will have assets of $64 billion as of 12/31/19 with $50 million in standard DOA or checking accounts and $14 million in investments.

It is estimated that HSAs will have assets of $75 billion as of 12/31/20 with $58 million in standard ODA or checking accounts and $17 million in investments.

There were 2018 contributions of $34 billion. In 2017 there were contributions of $28 billion in 2017 and in 2014 there were contributions of $19 billion.

There are 3 primary sources of HSA contributions: employers, individuals/employees associated with an employer, and Individuals not associated with an employer.

Employers contributed 9 billion. The average contribution was $839.

Individuals/employees associated with an employers contributed 19.4 billion. The average contribution was $1,872.

Individuals not associated with an employer contributed 4.4 billion. The average contribution was $1,723.

As you would expect the current average HSA balance correlates very closely with how many years a person has maintained their HSA. A person who opened their HSA in 2005 has an average balance of $8900 whereas it is only $1,500 if established in 2017 or $2,100 if established in 2016.

Directly Rolling Over 401(k) Funds Into a SIMPLE-IRA – Not Always Doable

Q. Can a 401(k) be transferred into a SIMPLE-IRA? I am having difficulty getting a simple answer.

A. No, the 401(k) funds can't generally be transferred or directly rolled over into a "new" SIMPLE-IRA.

SIMPLE-IRAs are subject to a 2-year rule, actually there are 2 rules. First, a person under age 59½ who withdraws funds from their SIMPLE-IRA during the 2-year period owes an additional tax of 25% rather than 10%. Second, during the 2-year time period the SIMPLE-IRA accountholder is ineligible to rollover or transfer such funds. Any attempt to do so before the 2-year rule has been met means the person must include the distribution in their income and the additional 25% tax will be owed.

A SIMPLE-IRA accountholder is ineligible to move funds into their SIMPLE-IRA from another plan such as a 401(k) plan or a traditional IRA until he or she has met the 2-year requirement.

A SIMPLE-IRA accountholder is ineligible to move funds out of their SIMPLE-IRA into another plan such as a 401(k) plan or a traditional IRA until he or she has met the 2-year requirement.

See the adjacent IRS rollover chart. The 2-year rule applying to rollovers also applies to transfers. See the attached discussion for preparing Form 1099-R.

Some employers which sponsor a 401(k) plan may decide to terminate it and replace it with a SIMPLE-IRA plan.

Is it possible to immediately move the 401(k) funds into a person's SIMPLE-IRA.

The answer is generally "no" due to the 2-year rule applying to SIMPLE-IRAs.

The 401(k) funds can be directly rolled over into a traditional IRA or SEP IRA and then once the 2-year requirement has been met these funds are eligible to combined with the SIMPLE-IRA funds.

Although it is unlikely, it might be possible an employer had sponsored a SIMPLE-IRA plan for a number of years, then terminated that plan and set up a 401(k) plan and then a number of years later terminated the 401(k) plan and again set up a new SIMPLE-IRA plan. An argument could be made that a SIMPLE-IRA accountholder who had satisfied the two year requirement with respect to the first SIMPLE-IRA plan has also met the requirement with respect to the second SIMPLE-IRA plan. However, the conservative approach would be, these are two different SIMPLE-IRA plans and the 2-year rule applies separately to each plan.

Another unusual situation might be, Jane Doe has two jobs. At job #1 she participates in a 401(k) plan and at job #2 she participates in a SIMPLE-IRA plan. She has met the 2-year requirement with respect her SIMPLE-IRA at job #2. If she terminates her service at job #1 and she is eligible to withdraw her 401(k) funds, then she is eligible to directly rollover her 401(k) funds into her SIMPLE-IRA related to job #2 because she has met the 2-year rule.

ROLLOVER CHART

Roll From	Roll To: 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.

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IRS Adopts Final Regulation On Hardship Distributions For 401(k) Plans

Employees are more inclined to participate in their employer's 401(k) plan or other retirement plans and to defer larger portions of their wages if they know they can access their funds prior to retirement or separation from service if they would have a financial emergency.

What is a hardship distribution? The law defines it, but an employer in writing its plan may adopt a broader definition.

Most distributions will not qualify as a hardship distribution.

Under existing law, a 401(k) participant who takes a hardship distribution becomes ineligible to make additional elective deferral contributions for 6 months. It used to be 12 months; the law was changed in 2001 to reduce the time period to 6 months. The new rule is, effective January 1, 2020, a 401(k) or 403(b) plan can no longer suspend a participant's right to make elective deferrals even though the person has taken a hardship distribution. Plan documents must be amended accordingly.

A hardship distribution may only be made if the participant has an immediate and heavy financial need and where the plan distribution is needed to satisfy the immediate and heavy financial need.

What must a participant do and the plan administrator do to make the determination that the participant has an immediate and heavy financial need? Current law does not define the plan administrator's duty. That is, there is no safe harbor for the plan administrator.

Under the final regulation the participant must represent that he or she does not have reasonably available liquid assets to pay the hardship expenses. The representation can be in writing or can be furnished by electronic medium, including faxes and emails or online or by phone. The plan administrator is able to rely on the participant's representation.

The following rules apply to determine if this need requirement exists:

1. The distribution amount must be equal to or less than the immediate and heavy financial need amount. Such amount includes any additional tax liability arising from the distribution.
2. The participant has obtained all distributions, other than hardship distributions, under all plans maintained by the employer.
3. The participant has obtained all loans under all plans maintained by the employer.

The new regulation allows an employer to eliminate the requirement that all loans must be obtained before being eligible for a hardship distribution. An employer is permitted to retain this requirement.

The following rules apply to determine if there is an immediate and heavy financial need.

1. Medical expenses for the participant, participant's spouse, any dependent or primary beneficiary;
2. The purchase of a principal residence;
3. Certain post secondary educational expenses for the participant, participant's spouse, any dependent or primary beneficiary;
4. Payments to prevent eviction of foreclosure of a mortgage on the principal residence;
5. Funeral or burial expenses for the participant, participant's spouse, any dependent or primary beneficiary; and
6. Expenses that would qualify as a casualty loss deduction under Code section 165 to repair damage to the participant's principal residence.

The final regulation authorizes an employer to expand the definition of immediate and heavy financial need to include expenses or costs associated with certain FEMA disasters and casualty losses.

The final regulation also authorizes an employer to expand the source or sources available for the hardship distribution. Under current law, an eligible participant can withdraw as a hardship distribution the amount of his or her elective deferrals, not including the earnings on such elective deferrals. Under the final regulation, if the employer so amends the plan document, an eligible participant can withdraw as a hardship distribution the amount of his or her elective deferrals, employer qualified matching contributions, employer non-elective contributions, employer safe harbor contributions and any associated earnings.

In general, a plan amendment must be adopted by December 31 of the year in which the change is effective.

Deadline,
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on the FMV statement for traditional IRAs, SEP-IRAs and Roth IRAs. However, a special rule applies for SIMPLE-IRAs. In the case of a SIMPLE-IRA, the IRA custodian must furnish a detailed statement listing all contributions (dates, and amounts) made by the employer on behalf of the SIMPLE-IRA accountholders.

Why is the IRA custodian/trustee required to furnish the FMV statement? A taxpayer who has basis within a traditional IRA, SEP-IRA or SIMPLE-IRA needs the FMV for purposes of completing the Form 8606 to determine the taxable portion of a distribution and the nontaxable portion.

The IRS may assess a penalty of $50 for each failure to furnish the FMV statement for traditional IRAs, SEP-IRAs, and Roth IRAs. The penalty is $100 PER DAY for failing to furnish the FMV statement for a SIMPLE-IRA.

RMD Notice for 2020

An IRA custodian/trustee must furnish each traditional/SEP/SIMPLE-IRA accountholder who was born on or before June 30, 1950 and who has a balance as of December 31, 2019 with an RMD Notice. This RMD notice must be furnished to ALL such accountholders and not only to those individuals who attain age 70½ in 2020. The RMD notice is not required to be furnished to an individual who only attains age 70 in 2020 (i.e. born between July 1, 1950 and December 31, 1950).

There is no requirement and no need to furnish an RMD Notice to a Roth IRA accountholder since the RMD rules do not apply to a Roth IRA accountholder while he or she is alive.

Three items must be set forth in the required RMD Notice.

First, the deadline applying to the IRA accountholder must be set forth. This will be December 31, 2020, for an individual who is older than age 70½ in 2020 or April 1, 2021, if the individual attains age 70½ in 2020. Second, there must a sentence informing the individual that the IRS will be told on the 2019 Form 5498 that he or she is subject to the RMD rules for 2020. Third, the individual must be informed of his or her RMD amount for 2020 or that such amount has not been calculated, but will be if the individual contacts the IRA custodian/ trustee and requests that the calculation be made.

Current IRS rules do not require the IRA custodian/trustee to furnish an RMD notice to an inheriting IRA beneficiary. CWF strongly suggests you do so. The model IRS IRA forms require that there be an RMD distribution made to an inheriting beneficiary. A beneficiary who fails to take an RMD will owe the 50% tax and may well argue that the custodian/trustee should pay some of this tax for its failure to notify or payout a RMD.

The IRS may assess a fine of $50.00 for each time an IRA custodian/trustee would fail to furnish a complying RMD notice.

2019 Form 5498

The IRS has issued guidance that it is permissible for an IRA custodian/trustee to furnish the 2019 Form 5498 by January 31, 2020. By doing so, the IRA custodian/trustee will satisfy the following three requirements: furnishing the 2020 RMD notice by January 31, 2020 furnishing the 2019 FMV statement by January 31, 2020 and furnishing the 2019 Form 5498 by June 1, 2020. In 2020, May 31 is a Sunday. The IRA custodian/trustee must complete boxes 11, 12a and 12b on the 2019 Form 5498 and it is required to send a corrected 2019 Form 5498 by June 1, 2020 to any IRA accountholder who made a carry-back contribution for 2019 during the period of January 1, 2020 to April 15, 2020.

In summary, an IRA custodian/trustee must furnish the 2019 Form 1099-Rs, FMV statements, and 2020 RMD Notices by January 31, 2020 or it will be subject to being fined by the IRS.

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Email Guidance – IRA RMD versus 401(k)/Pension RMD

Different tax rules apply to IRA distributions versus distributions from a 401(k) or other employer-sponsored retirement plan.

An IRA accountholder is required by the IRA laws to withdraw his or her RMD for the year one attains age 70½ by April 1 of the following year and every subsequent year. There is no tax rule allowing the distribution of this IRA RMD to be deferred for any reason.

Sometimes you will have an IRA accountholder who continues to work after they are 70½. The person has been informed at work, you don't have to take an RMD because you are still working. Sometimes this person will incorrectly conclude, since I don't have to have an RMD from the 401(k) plan this must mean I have no duty to take the IRA RMD. This person will learn a tax lesson the hard way. The 50% tax will be owed if he or she fails to withdraw their IRA RMD. Why?

An IRA owner is required to comply with the IRA RMD rules which require the IRA owner to take an RMD for the year he or she attains age 70½ and all subsequent years while alive.

Your client is basically asking the question, since I'm not required to take any RMD from the pension plan because I'm still working, am I allowed not to take an IRA RMD because I'm still working?

The answer, he must withdraw his IRA RMD.

His is a very logical question, but a person will learn a tax lesson the hard way if he or she fails to take their IRA RMD. The RMD rules applying to an IRA owner are different from the RMD rules applying to certain pension plan participants such as your client.

An employer may write its pension plan to provide that any non-5% owner employee must commence RMD distributions for the later of the year a person retires or attains age 70½. An employee who is a 5% owner must take an RMD for the year he or she attains age 70½ and all subsequent years while alive just as with the IRA RMD rule.

Some employers will write their 401(k) plan or other plan to require that any employee age 70½ or older must withdraw their RMD under the same rules which apply for IRA purposes.

Also be aware, the IRS has adopted a special rule that a person with multiple IRAs is able to aggregate the RMDs related to such IRAs and then withdraw the total from just one of the IRAs. A person who is a participant in multiple pension plans must take an RMD from each pension plan. That is, there is no rule allowing a person to person to aggregate multiple pension plan RMDs or to aggregate a pension plan RMD with an IRA RMD.

12/31/19 RMD Deadline for 5-Year Rule if Death Occurred in 2014

This article is a reminder to an IRA custodian to make sure that any nonspouse beneficiary using the 5-year RMD rule must close out an inherited IRA by December 31, 2019, if the IRA accountholder died in 2014. If not closed, the beneficiary will owe the 50% tax on the balance as of December 31, 2019.

The tax laws require that the 5-year rule applies if the beneficiary is not an individual and the IRA holder has died prior to his or her required beginning date. For example, the IRA owner named his or her estate as the IRA beneficiary. This requires the owner's entire IRA must be distributed to the beneficiary by the end of the fifth year following the year of the IRA owner's death. No distribution is required prior to that fifth year. There is one exception to this rule. The 5-year rule does not automatically apply if the beneficiary is a qualified trust.

Who Pays US Income Tax?

1. There were 152,096,332 tax returns filed for 2017 as follows:

Filing Status	Number of Filed Returns	Percentage
Single	71,410,690	47.52%
Head of Household	121,659,639	14.41%
Married Filing Jointly	54,133,694	36.03%
Married Filing Separately	3,068,134	2.04%
Total	150,272,157	100.00%

The number of individuals is 204,405,851 (150,272,157 + 54,133,694).

2. Total income tax revenues were 1.57 trillion dollars.
3. Individuals with higher incomes pay the majority of U.S. federal income taxes.
   A. Top .32% (1/3 of 1%) of returns pay 26.5% of U.S. income tax revenues.
   B. Top 5% of returns pay 58% of U.S. income tax revenues.
   C. Top 40% of returns pay 93.5% of U.S. income tax revenues.
   D. Bottom 60% of returns pay 6.5% of U.S. income tax revenues.
4. The top 488,000 tax returns had AGI of $1,000,000 or more. These 488,000 returns comprise .32% (1/3 of 1%) of all returns. They pay $416 billion (26.52%) of the total income tax revenues of $1.57 trillion dollars. The average tax is $850,000.
5. There were 7,195,641 returns for filers with income between $200,000 and $999,999. They comprise 4.73% of all filers and they paid $503 billion (32.09%) of the total income tax revenues of $1.57 trillion dollars. The average tax amount is $69,960.
6. There were 54,109,421 returns for filers with income between $50,000 and $199,999. They comprise 35.58% of all filers and they paid $563,477,272 (34.92%) of the total income tax revenues of $1.57 trillion dollars. The average tax is $10,413.
7. There were 90,203,126 returns for filers with income between $1 and $49,999. They comprise 59.37% of all filers and they paid $85,880,064 (6.47%) of the total income tax revenues of $1.57 trillion dollars. The average tax is $952.
8. 93.53% of U.S. income tax revenues are paid by 40% of the tax returns. That is, by the 61.8 million tax returns show AGI of $50,000 or more.

   The remaining 6.47% of U.S. tax revenues are paid by the remaining 60% of the tax returns. That is, by the 90.2 million tax returns show AGI of less than $50,000.
9. Tax Revenues Paid Based on Tax Filing Status

Filing Status	Number of Filed Returns	Tax Revenues (000's)	Avg. Percentage	Tax
Single	71,410,690	$330,722,758	22.87%	$4,631
Head of Household	21,659,639	58,081,059	4.02%	$2,682
Married Filing Jointly	54,133,694	1,023,991,545	70.81%	$18,916
Married Filing Separately	3,068,134	33,252,623	2.30%	$10,838
Total	150.272.157	$1.446,047,984	100.00%	$9,623

Married individuals pay 73% of federal income tax although they comprise only 56% (114,403,656 out of 204,405,851) of the individuals filing a tax return. Conversely, unmarried individuals comprise 44% of the filing population and they pay 27% of the federal income tax.