The Pension Digest

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Are IRA Amendments Required For 2020-2021?

Yes, IRA amendments are required from a customer service viewpoint and also from an IRS compliance viewpoint. The law changes made by the SECURE Act and the CARES Act are not minor changes. They are major changes. Some would call them historic changes. Certainly, the change in the required distribution rules applying to inheriting beneficiaries are major. In general, a non-spouse beneficiary who is more than 10 years younger than the IRA owner will be required to close an inherited IRA under the 10-year rule and no longer can stretch out distributions over his or her life expectancy.

On September 8, 2020, the IRS issued Notice 2020-68. The IRS discussed the topic of IRA Amendments. IRA accountholders and beneficiaries must be informed of the new beneficiary RMD rules. The IRS stated that in order to accept contributions by eligible individuals over age 70½, the IRA plan agreement must be amended.

The governing IRA regulation requires an IRA custodian/trustee 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 or amended to set forth a current and correct explanation. 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.

A cardinal rule of IRA and pension law is, the terms of the IRA plan agreement control and in order for a person to benefit from a law change the plan document must be revised to set forth the new law. Individuals have the right to be informed and understand current laws and the particulars of the specific IRA plan agreement. Many individuals and possibly many IRA custodians might wish the law to be, since federal tax law authorizes a certain tax benefit, then a person should be able to realize a tax benefit regardless of what the IRA plan agreement provides. The law does not adopt this approach. For example, in order for a person age 74 to make an IRA contribution in 2020 or subsequent years to his or her traditional IRA, the IRA plan agreement must be revised to authorize the person to make such a contribution. A person who wants to make an IRA contribution after April 15th under the special disaster contribution rules must be authorized to do so by the IRA plan agreement. In order for an IRA owner who attains age 70½ in 2020 to not take a required distribution for 2020, the IRA plan agreement must be amended.

When is it necessary for an IRA custodian/trustee to furnish an IRA amendment? Is it necessary or required to furnish one in 2021?

Each institution must make its own determination because one needs to understand when was the IRA agreement last amended and how is it being amend-

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Amendments,
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ed. A primary question is, "when is the last time the financial institution furnished an amendment?" What do the current IRA plan agreements provide? Are there some IRAs set up with one certain plan agreement and others with a different plan agreement?

One may learn a tax lesson the hard way, if he or she adopts the position that an amendment is not required because the IRS has not said one is required.

A long time ago (1986/1987) the IRS acknowledged that there are times that even though the IRA plan agreement has not been changed, a disclosure statement amendment must still be furnished. Example, when the deductible/nondeductible rules were first authorized in 1986/1987, such rules did not require the IRA form to be rewritten because the IRA form discusses the maximum contribution amount limit, but does not discuss the deductible/nondeductible rules. The IRS stated there needed to be a disclosure statement amendment discussing or explaining the deductible/nondeductible rules.

In summary, answering a question whether or not an amendment is required is not simple. Each financial institution will need to make its own decision to furnish one or both amendments.

It is true that the IRS has not been very active in auditing whether or not IRA custodian/trustees are furnishing IRA amendments as required by the IRA regulation. We at CWF believe it is in the best interest of a financial institution to furnish the amendments. The governing IRA regulation provides that a $50 fine may be assessed an institution for each time it fails to furnish the IRA plan agreement and $50 each time it fails to furnish the IRA disclosure amendment.

Email Guidance – IRA Owner Wants to Make a Roth IRA Conversion When There Are Nondeductible Contributions

Q1. I think I know the answer to my question, but I will feel better if I have consulted with you.

Here's the scenario of a prospective client: Bill has a $50,000 Traditional IRA "A" funded with pre-tax contributions.

Bill has a $25,000 Traditional IRA "B" funded with a $20,000 basis established by the nondeductible contributions.

"A" & "B" are in separate account numbers.

Bill also has Roth IRA "C" funded with direct Roth IRA contributions.

Bill would like to convert his $25,000 Traditional IRA "B" into his Roth IRA "C".

When calculating the tax on converting Traditional IRA "B" funded with the nondeductible contributions, is he able to segregate the transaction so that he pays tax ONLY on the $5,000 earnings in Traditional IRA "B"?

Or– When calculating the amount of tax due if he converts Traditional IRA "B" into the Roth, do IRA "A" (funded with pre-tax contributions) and IRA "B" (funded with nondeductible contributions) aggregate?

I would like option 1 to be the answer, but I fear it is not –

A1. You are correct he must aggregate all of his traditional, SEP and SIMPLE IRAs and then apply the prorate rule to any distribution. The tax rules do not allow him to convert just his basis of $20,000 or just the funds in the one IRA containing the basis.

Might he be a 401(k) participant who would have the right to rollover into a 401(k) plan (or make a direct payment) his taxable IRA funds of $55,000? If so, he then could convert his basis of $20,000 with no tax being owed since it is 100% basis.

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Email Guidance – A Person's Estate Should Not be Designated as the IRA Beneficiary

Q-1. The customer that contacted us is not married and is 73. He is converting funds from Traditional IRA to a new Roth IRA and requested that his will dictate who is the beneficiary of his Roth IRA Funds. If he doesn't name a beneficiary, by default the funds would go to the estate?

Is it correct that a will cannot be named as the beneficiary? He stated he wanted his siblings to have equal portions as directed by his will.

I've told him to contact his financial advisor obviously, but staff here also had some questions.regarding this topic due to the caveats of not naming a beneficiary.

A-1. I will.discuss, but he must act on the advice of his adviser. I am not that person.

A will/estate and a Roth IRA are two separate legal entities. For the income tax reason discussed below, he does not want to name his estate as the beneficiary of his Roth IRA. He should name his siblings directly as the primary beneficiaries of his Roth IRA and not his estate.

Why? Under the new beneficiary RMD laws when an estate is the beneficiary, the Roth IRA must be closed under the 5-year rule. The 5-year rule does not apply if he names one or more persons to be his Roth IRA beneficiaries.

Before I re-read your email, I had assumed that children would be the designated beneficiaries. This was wrong of me. However, I am able to illustrate the tax benefits if the designated beneficiaries would have been children. See the discussion in the next three paragraphs.

The main purpose of a Roth IRA is to have it earn tax-free income. Once he has met the 5-year rule all income earned by his Roth IRA will be tax-free. This includes while he is alive and then after his death.

Upon his death, if a child had been the designated beneficiary, then the Roth IRA would have been closed under the 10-year rule.

Upon his death, if his estate had been the designated beneficiary, then the Roth IRA would have been closed under the 5-year rule. Why miss out on 5 years of additional tax free income?

The discussion becomes a little more complicated if he designates his siblings as his primary beneficiaries. The fact is, the distribution period in many situations will be longer than 10 years. If so, the tax benefits most likely will improve substantially.

You have not indicated the ages of any of his siblings. Some older? Some younger?

Under the new laws a beneficiary who is not more than 10 years younger that the Roth IRA owner is able to use the life distribution rule and not the 10-year rule. See the single life table.

For discussion purposes I will assume he has a sister who is 5 years younger then him. He dies when he is age 83. She would be age 78. The divisor from the single life table is 14.8 years. This means she could have tax-free income for another 14.8 years rather than the 10 years. If he names his estate as his beneficiary, the 5-year rule would apply. Again, why miss out on an additional 14.8 years of tax free income?

I hope he and his adviser agree with me.

CWF's Consulting Hours

We are here to assist you assist your customers.
All questions are good questions.

8:00 am – 3:45 pm CST

Call: 1-800-346-3961

Email: jmcarlson@pension-specialists.com

IRS Issues Multiple Guidance (Relief) With Respect to Payments to a State Unclaimed Property Fund

Some of the relief and guidance is directed at retirement administrators and IRA trustees and some is issued to individuals.

The IRS recently issued additional guidance with respect to a retirement plan administrator's or an IRA trustee's duty to withhold federal income tax from a payment which it makes to a state unclaimed property fund and its duty to prepare the Form 1099-R.

A retirement plan administrator or an IRA trustee in certain situations may pay an individual's account balance to a state unclaimed property fund because it cannot locate the individual. For example, Jane separated from service with ABC corporation four years ago and her vested account balance is $850. The plan has been trying for 3 years to pay her vested account balance, but the plan has been unable to locate her. The retirement plan chooses to pay her funds to the state unclaimed property fund.

Rev. Rul. 2020-24 discusses whether a distribution of a participant's vested account which is less than $1000 must be or may be paid to a state's unclaimed property fund if the individual cannot be located.

The IRS guidance is not as clear as it should be in many ways. However, the IRS guidance is clear that the tax withholding rules of Code section 3405 apply and that if any payment is made to a state's unclaimed property fund that a Form 1099-R must be prepared.

The IRS guidance does not discuss who is the recipient on the Form 1099-R. Is it the individual or is it the state's unclaimed property fund? Presumably, based on prior guidance issued with respect to an IRA trustee's duty to withhold federal taxes with respect to the payment of IRA funds to a state's unclaimed property fund, the Form 1099-R is to list the individual as the recipient as there is a deemed distribution on behalf of the individual.

The IRS guidance does not discuss what rate of federal income tax withholding applies to the distribution. Is it 20% or is it 10%? You would think the IRS would illustrate when 20% was to be withheld for federal income tax purposes and when 10% was to be withheld? The IRS fails to discuss this subject. One wonders when state revenues department will start issuing new guidance so that if there's to be federal withholding, then there also is to be state income tax withholding.

The IRS grants some transitional relief in Rev. Rul. 2020-24. A retirement plan administrator or an IRA trustee which fails to withhold federal income tax or fails to prepare the Form 1099-R will not fined by the IRS with respect to payments made before the earlier of: the date it becomes reasonably practicable for the person to comply with these requirements or January 1, 2022. The IRS does not define when it becomes reasonably practicable for a payer to comply with these requirements.

In Revenue Procedure 2020-46 the IRS grants additional rollover relief in two situations, one of which is directly related to distributions to a state unclaimed property fund.

First, an individual who had his or her IRA funds or 401(k) funds paid to a state unclaimed property fund has the right to rollover the amount which was withheld for federal income taxes if the individual recovers his funds from the state unclaimed property fund and then follows the IRS procedure for a certified late rollover.

The IRS has amended its procedure for a certifying a late rollover by adding as a qualifying reason, reason #12 which is, the distribution was made to a state unclaimed property fund. To qualify for this relief, the individual must make their late rollover as soon as practicable after the reason or reasons listed for not complying with the 60-day rule no longer prevent the individual from making the rollover contribution. That is, he or she reclaims their IRA funds from the state unclaimed property fund. The individual is automatically found to be eligible to make the rollover as long as the rollover contribution is made within 30 days of the event which had prevented him or her of making the rollover contribution within the 60-day period.

Second, if the IRS audits a taxpayer, the IRS has the authority to determine if the individual qualifies for a waiver of the 60-day rule. This is good news for taxpayers because certainly there are/were situations where a person failed to comply with the 60-day rule for a reason other than one of the twelve listed reasons. Prior to

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this guidance an IRS auditor may have adopted the strict approach, IRS procedures allow me to grant you relief only in certain situations and your reason is not one of them. Auditors now have the authority to grant relief to a taxpayer.

Email Guidance – Levy by a State Revenue Department on an IRA

Q-1. We have received a State of XXXX Revenue Levy for a customer that has an IRA. How d0 we process the distribution on that?

A-1. This is a be careful area.

The bank should discuss this matter with the bank's attorney. You want to confirm with the bank's attorney that the State has the right to levy a person's IRA. I presume it does or it would not have issued the levy.

General discussion. The state wants to recover a certain amount. When a person takes an IRA distribution or there is a deemed distribution because of the levy, federal law in general requires a withholding notice be furnished the IRA accountholder and then 10% is to be withheld for federal income tax purposes unless the person instructs that he or she wants no withholding or wants more than 10% withheld.

That is, the bank cannot pay 100% of the distribution amount to the state unless the person instructs you that he or she wants no withholding.

At a minimum the IRS believes it is entitled to 10% unless the person has instructed to have no withholding. The IRS believes it is entitled to more than 10% if the person instructs to have more withheld.

The bank should notify the individual that the State has levied his or her IRA. The bank should furnish the withholding notice or a standard IRA distribution form.

I understand the person does have the right (i.e complete the IRA distribution form) to say that he or she wants 100% withheld. Obviously, the state will not like this result and will presumably argue otherwise.

I don't believe the bank has to expressly educate the person that he or she has the right to have more than 10% withheld, including 100%.

Whatever amount is distributed to the state/IRS will be reported on the person's Form 1099-R. The reason code to be reported in box 7 of Form 1099R should be a "1" if the person is under age $59^1/_2$. The person will owe the 10% tax if under age $59^1/_2$ and will have to include the distribution amount in income. Reason code "2" is not used because the levy is by the state and not the IRS.

If the above procedures would not be followed and the bank just paid the state the amount it has demanded, then the individual (and the IRS) might have a claim against the bank. Because the bank did not furnish the withholding notice and it did not withhold as it should have, it has some liability.

Can a bank rely on a prior instruction by the IRA accountholder to have no withholding and so there could be no withholding with respect to the levy distribution? I don't think so.

Use of the New RMD Tables Postponed Until 2022

An IRA custodian/trustee has the duty each year to furnish an RMD Notice to all affected IRA account holders by January 31 of each year. The 2020 RMD Notice had to be furnished by January 31, 2020. The 2021 RMD Notice must be furnished by January 31, 2021.

The IRS in November of 2019 had issued revised proposed life expectancy tables otherwise known as mortality tables. The current tables were created in 2002. The IRS finally concluded in 2019 that its three life expectancy table should be updated to reflect the fact that life expectancy in the United States had improved over the last 18 years. The three tables are Uniform Lifetime Table, Single Life Table and the Joint and Last Survivor Table. The IRS guidance was – the 2020 RMD calculations will still be made using the current table but the new 2019 tables would be used for the 2021 RMD calculations.

Then COVID-19 happened. The CARES Act was enacted on March 27, 2020. All 2020 RMDs were waived. RMDs for 2020 were calculated using the 2002 RMD tables as set forth in the final regulation, 1.401 (a)(9).

Until recently it was understood that an IRA custodian/trustee had to furnish a 2021 RMD notice by January 31, 2021. That 2021 RMD was to be prepared using the revised life expectancy tables as issued in November of 2019.

On November 5, 2020, the IRS announced it was adopting its proposed regulation as a final regulation. There were a few changes, including replacing the 2019 tables with the revised 2020 tables and postponing the use of these 2020 tables until 2022. This means then that the 2002 tables will still be used for the 2021 RMD calculations. Set forth below are the final approved life expectancy tables.

Comparing the Uniform Lifetime Tables 2002-2021 Versus 2022-Onward

Uniform Lifetime Table

Age of IRA Accountholder	Distribution Period (2002)	Final 2022	Age of IRA Accountholder	Distribution Period (2002)	Final 2022
72	25.6	27.4	**97**	7.6	7.8
73	24.7	26.5	**98**	7.1	7.3
74	23.8	25.5	**99**	6.7	6.8
75	22.9	24.6	**100**	6.3	6.4
76	22.0	23.7	**101**	5.9	6.0
77	21.2	22.9	**102**	5.5	5.6
78	20.3	22.0	**103**	5.2	5.2
79	19.5	21.1	**104**	4.9	4.9
80	18.7	20.2	**105**	4.5	4.6
81	17.9	19.4	**106**	4.2	4.3
82	17.1	18.5	**107**	3.9	4.1
83	16.3	17.7	**108**	3.7	3.9
84	15.5	16.8	**109**	3.4	3.7
85	14.8	16.0	**110**	3.1	3.5
86	14.1	15.2	**111**	2.9	3.4
87	13.4	14.4	**112**	2.6	3.3
88	12.7	13.7	**113**	2.4	3.1
89	12.0	12.9	**114**	2.1	3.0
90	11.4	12.2	**115**	1.9	2.9
91	10.8	11.5	**116**		2.8
92	10.2	10.8	**117**	1.6	2.7
93	9.6	10.1	**118**	1.4	2.5
94	9.1	9.5	**119**	1.1	2.3
95	8.6	8.9	**120**	1.0	2.0
96	8.1	8.4			

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Comparing the Single Life Tables 2002-2021 Versus 2022-Onward

Age of IRA Beneficiary	Distribution Period (2002)	Final 2022	Age of IRA Beneficiary	Distribution Period (2002)	Final 2022	Age of IRA Beneficiary	Distribution Period (2002)	Final 2022
0	82.4	84.6	**51**	33.3	35.3	**102**	2.5	2.5
1	81.6	83.7	**52**	32.3	34.3	**103**	2.3	2.3
2	80.6	82.8	**53**	31.4	33.4	**104**	2.1	2.2
3	79.7	81.8	**54**	30.5	32.5	**105**	1.9	2.1
4	78.7	80.8	**55**	29.6	31.6	**106**	1.7	2.1
5	77.7	79.8	**56**	28.7	30.6	**107**	1.5	2.1
6	76.7	78.8	**57**	27.9	29.8	**108**	1.4	2.0
7	75.8	77.9	**58**	27.0	28.9	**109**	1.2	2.0
8	74.8	76.9	**59**	26.1	28.0	**110**	1.1	2.0
9	73.8	75.9	**60**	25.2	27.1	**111**	1.0	2.0
10	72.8	74.9	**61**	24.4	26.2	**112**		2.0
11	71.8	73.9	**62**	23.5	25.4	**113**		1.9
12	70.8	72.9	**63**	22.7	24.5	**114**		1.9
13	69.9	71.9	**64**	21.8	23.7	**115**		1.8
14	68.9	70.9	**65**	21.0	22.9	**116**		1.8
15	67.9	69.9	**66**	20.2	22.0	**117**		1.6
16	66.9	69.0	**67**	19.4	21.2	**118**		1.4
17	66.0	68.0	**68**	18.6	20.4	**119**		1.1
18	65.0	67.0	**69**	17.8	19.6	**120**		1.0
19	64.0	66.0	**70**	17.0	18.8			
20	63.0	65.0	**71**	16.3	18.0			
21	62.1	64.1	**72**	15.5	17.2			
22	61.1	63.1	**73**	14.8	16.4			
23	60.1	62.1	**74**	14.1	15.6			
24	59.1	61.1	**75**	13.4	14.8			
25	58.2	60.2	**76**	12.7	14.1			
26	57.2	59.2	**77**	12.1	13.3			
27	56.2	58.2	**78**	11.4	12.6			
28	55.3	57.3	**79**	10.8	11.9			
29	54.3	56.3	**80**	10.2	11.2			
30	53.3	55.3	**81**	9.7	10.5			
31	52.4	54.4	**82**	9.1	9.9			
32	51.4	53.4	**83**	8.6	9.3			
33	50.4	52.5	**84**	8.1	8.7			
34	49.4	51.5	**85**	7.6	8.1			
35	48.5	50.5	**86**	7.1	7.6			
36	47.5	49.6	**87**	6.7	7.1			
37	46.5	48.6	**88**	6.3	6.6			
38	45.6	47.7	**89**	5.9	6.1			
39	44.6	46.7	**90**	5.5	5.7			
40	43.6	45.7	**91**	5.2	5.3			
41	42.7	44.8	**92**	4.9	4.9			
42	41.7	43.8	**93**	4.6	4.6			
43	40.7	42.9	**94**	4.3	4.3			
44	39.8	41.9	**95**	4.1	4.0			
45	38.8	41.0	**96**	3.8	3.7			
46	37.9	40.0	**97**	3.6	3.4			
47	37.0	39.0	**98**	3.4	3.2			
48	36.0	38.1	**99**	3.1	3.0			
49	35.1	37.1	**100**	2.9	2.8			
50	34.2	36.2	**101**	2.7	2.6			

Email Guidance – A Trust Generally Should Not be the Designated IRA Beneficiary

Q-1. We have an IRA customer who passed away earlier this year who had named their revocable trust as the beneficiary. The grantors were the husband (R) and wife (C). C passed away and we need to take care of moving her IRA to an inherited IRA.

The Trust was R & C Revocable Trust of which R is the surviving grantor and trustee. At this point the trust is under R's SSN. We only have part of the trust document which does not tell who the beneficiaries are, but it does mention grandchildren.

My question is if we transfer the IRA to an Inherited IRA owned by the trust, any distributions would be reported to the IRS under R's SSN. Also, if R was not the original primary beneficiary, does this follow the 10-year distribution rule? I will be speaking with R later this week and was trying to get my information correctly first.

A-1. Your situation and question is one which I think is going to be more prevalent than it should be.

I may be biased, but individuals should not be designating revocable trusts as their IRA beneficiary. This is especially true after the enactment of the SECURE Act on December 20, 2019.

Attorneys who write revocable trusts hopefully come to the understanding that they need to work with their clients to coordinate their IRA beneficiary designation with the revocable trust rather than thinking designating the trust is sufficient.

If current IRA owners have designated a trust as their IRA beneficiary, they should seriously consider changing such a designation. I believe many of these IRA owners should be designating living individuals as their beneficiaries as soon as possible. We suggest IRA trustees inform their IRA clients that they should be talking with their adviser and then making this change.

Why?

If an IRA accountholder dies in 2020 having named a non-EDB trust as their IRA beneficiary, then we understand the inherited IRA must be closed under the 5-year rule. That is, the 10-year rule does not apply. The 10-year rules applies only if the beneficiary is a person. Some advisers are suggesting that a "qualified" trust is able to use the 10-year rule. We disagree.

In order for a trust to be an EDB trust it must have at least one beneficiary who is a person who is disabled or chronically ill. Other rules must also be met.

Whomever wrote this trust should explain to the surviving spouse in writing how the new beneficiary RMD laws will impact the RMD for 2021 and subsequent years.

The bank as the IRA trustee can adopt the position – under IRS procedures it is primarily up to the beneficiary to comply with the beneficiary RMD rules. We the bank, will follow the beneficiary's instruction as advised by their adviser. The beneficiary is responsible for the tax consequences of not complying with the beneficiary RMD rules. The 50% tax is owed for each year a person has an excess accumulation. That is, any balance in the inherited IRA after the 5-year period has ended means the 50% tax is owed for each year.

Upcoming 2021 IRA Furnishing and Filing Deadlines

FMV IRA Statement to IRA Owners and Beneficiaries	2/1/2021*
Form 1099-R IRA Distributions to IRA Owners and Beneficiaries	2/1/2021*
Form 1099-R IRA Distributions to IRS If File on Paper	3/1/2021**
Form 1099-R IRA Distributions to IRS If File Electronically	3/31/2021
RMD Notice to IRA Owners Age 72 or Older in 2021	2/1/2021*
Form 5498 (IRA Contributions to IRA Owners and Beneficiaries)	6/1/2021***
Form 5498 (IRA Contributions to IRS)	6/1/2021***

* (Since 1/31/21 is a Sunday)
** (Since 2/28/21 is a Sunday)
*** Statutory deadline is May 31, 2021. IRS should explain why the 2020 instructions at one place indicate the deadline is 6/1/21 and at another place indicates the deadline is 5/31/20.