Retirement Update

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Internal Revenue Service

IRS Application of One-Per-Year Limit on IRA Rollovers Clarified

Information Release 2014-107 and Announcement 2014-32, which were both published November 10, 2014, address the implications a 2014 IRA rollover has on the one-per-year limit imposed on tax-free rollovers between IRAs. http://www.irs.gov/uac/Newsroom/IRS-Clarifies-Application-of-One-Per-Year-Limit-on-IRA-Rollovers-Allows-Owners-of-Multiple-IRAs-a-Fresh-Start-in-2015 http://www.irs.gov/pub/irs-drop/a-14-32.pdf

Announcement 2014-15, which released in March of 2014 after a pertinent tax court decision (Bobrow v. Commissioner, T.C.Memo 2014-21), stated that the application of the one-rollover-per-year restriction for IRAs was to be applied on an aggregate basis starting in 2015, rather than on an IRA-by-IRA basis. http://www.irs.gov/pub/irs-drop/a-14-15.pdf It is important to note that the ability of an IRA owner to transfer funds from one IRA trustee directly to another will not be impacted because such a transfer is not a rollover and, therefore, is not subject to the one-rollover-per-year limitation.

The most recent guidance clarified that a distribution from an IRA received during 2014 and properly rolled over (normally within 60 days) to another IRA, will have no impact on any distributions and rollovers during 2015 involving any other IRAs owned by the same individual. As a result, IRA owners will have a "fresh start" in 2015 when applying the one-per-year rollover limit to multiple IRAs.

IRS Revises Safe Harbor Explanations

Notice 2014-74, which was released November 24, 2014, modifies the safe harbor explanations given to recipients of eligible rollover distributions to satisfy the disclosure requirements under 402(f). http://www.irs.gov/pub/irs-drop/n-14-74.pdf One explanation is for payments not from a designated Roth account and the other explanation is for payments from a designated Roth account.

Modified safe harbor explanations are necessitated by changes in the law since September 28, 2009. The instructions in Notice 2009-68 on how to use the safe harbor explanations continue to apply. http://www.irs.gov/irb/2009-39_IRB/ar14.html. As explained in the newly released notice, amendments to the safe harbor explanations relate to the allocation of pre-tax and after-tax amounts, distributions in the form of in-plan Roth rollovers, and certain other clarifications. Changes to the safe harbor explanations in accordance with Notice 2014-54 that will permit a taxpayer to direct after-tax and pretax amounts under 401(a), 403(b) and governmental 457(b) plans that are simultaneously disbursed to multiple destinations are also addressed. http://www.irs.gov/pub/irs-drop/n-14-54.pdf

Note that further modifications to the safe harbor explanations will become necessary as changes in the relevant law occur after December 8, 2014.

IRS Rollover Chart Updated

On November 17, 2014, the IRS released the revised rollover chart. http://www.irs.gov/pub/irs-tege/rollover_chart.pdf This helpful chart, which appears below, references the one-per-year limit on IRA rollovers.

ROLLOVER CHART

11/17/2014

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]	NO	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]	NO	YES[2]	YES[4]	YES	YES	NO
Governmental 457(b)	YES[3]	YES	NO	YES	YES	YES	YES	YES[3,5]
Qualified Plan[1] (pre-tax)	YES[3]	YES	NO	YES	YES[4]	YES	YES	YES[3,5]
403(b) (pre-tax)	YES[3]	YES	NO	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] Beginning in 2015, only one rollover in any 12-month period. A transitional rule may apply in 2015.
[3] Must include in income
[4] Must have separate accounts
[5] Must be an in-plan rollover
[6] Any amounts distributed must be rolled over via direct (trustee-to-trustee) transfer to be excludable from income
For more information regarding retirement plans and rollovers, visit Tax Information for Retirement Plans.

Two IRS Webinars Announced

On December 4, 2014, the IRS held a webinar *Properly Defining Retirement Plan Compensation*. http://www.visualwebcaster.com/IRS/101018/reg.asp?id=101018 The following topics were discussed:

1. Compensation under 414(s) and 415;
2. Identifying which definition may be used for each plan purpose; and
3. Common plan failures involving compensation.

On December 11, 2014, the IRS will hold a webinar *Retirement Plan Distributions: What Every Participant Should Know.* http://www.visualwebcaster.com/IRS/101021/reg.asp?id=101021 The following areas will be covered:

1. Taking a distribution from a retirement or IRA-based plan;
2. New plan distribution rule allows pre and post-tax amounts to multiple destinations;
3. 2015 one rollover per year rule for IRAs;
4. Exceptions to the additional 10% tax on early distributions from plans and IRAs;
5. Importance of beneficiary designations; and
6. Required minimum distributions.

IRS Publishes Two Editions of *Employee Plan News*

Employee Plan News – November 13. 2014 Issue 2014-18 http://www.irs.gov/pub/irs-tege/epn_2014_18.pdf

An article reported on the Employee Plans Compliance Unit (EPCU) review of money purchase plans in the qualified joint & survivor annuities (QJSA) project. Form 5500s of the money purchase plans showing distributions during the plan year were reviewed. According to the article, which offered suggestions and resources to assist in improving compliance, the project goals and results determined:

> *Project goals*
>
> *EPCU designed the project to determine whether money purchase plan sponsors:*
>
> - *distributed benefits to married participants as a QJSA, or*
> - *obtained spousal consent before distributing benefits to married participants in a form other than a QJSA, such as a single lump sum.*
>
> *Project results*
>
> *Most plan sponsors complied with the QJSA notice and consent requirements for plan distributions; however, the EPCU did find some sponsors that didn't:*
>
> - *secure spousal consent when the participant waived the QJSA, or*
> - *ensure that a plan representative or notary public witnessed the consent.*

Employee Plan News – November 24, 2014 Issue 2014-19 http://www.irs.gov/pub/irs-tege/epn_2014_19.pdf

Information included the following:

- Modified 403(b) plan Listing of Required Modifications (LRM) will be released soon. Clarifications and corrections to the sample plan language released when the 403(b) pre-approved plan program was established in 2013 will be available before the April 30, 2015 deadline to submit a 403(b) pre-approved plan under the program.

- Determination letter filings - Cycle D ends January 31, 2015, for individually designed plan sponsors whose EIN ends in 4 or 9 and multiemployer plans.

- Rollover chart - The revised rollover chart (see above) summarizing allowable transfers to and from plans and IRAs is linked.

IRS Explains Advantages of Saver's Credit

On November 3, 2014, the IRS published Information Release 2014-106, which explains how low and moderate income workers can take advantage of saving for retirement while earning a special tax credit in 2014 and the years beyond. http://www.irs.gov/uac/Newsroom/Plan-Now-to-Get-Full-Benefit-of-Saver%E2%80%99s-Credit-Tax-Credit-Helps-Low-and-Moderate-Income-Workers-Save-for-Retirement

Form 8880 is used to claim the saver's credit and its instructions contain details on figuring the credit correctly. http://www.irs.gov/pub/irs-pdf/f8880.pdf As explained in the Information Release, the saver's credit, which helps offset part of the first $2,000 workers voluntarily contribute to IRAs and workplace retirement programs, can be claimed by:

- Married couples filing jointly with incomes up to $60,000 in 2014 or $61,000 in 2015;
- Heads of Household with incomes up to $45,000 in 2014 or $45,750 in 2015; and
- Married individuals filing separately and singles with incomes up to $30,000 in 2014 or $30,500 in 2015.

According to the Information Release, eligible workers still have time to make qualifying retirement contributions and get the saver's credit on their 2014 tax return, if they add money to an existing IRA or set up a new retirement arrangement by April 15, 2015. It is important to note that elective deferrals contributions must be made by the end of 2014 to a 401(k) plan or similar workplace program, such as a 403(b) plan for employees of public schools and certain tax-exempt organizations, a governmental 457 plan for state or local government employees in order to take advantage of the saver's credit for 2014.

Tax Exempt/Government Entities Division of IRS Details Fiscal Year 2015 Objectives

Sunita B. Lough, Commissioner of the Tax Exempt/Government Entities Division (TE/GE) of the IRS, has released the TE/GE Program Letter for FY 2015 to provide one document discussing TE/GE's priorities and focus for the coming year. http://www.irs.gov/pub/irs-tege/tege_fy15_program_letter.pdf Rather than specifically addressing the numerous programs that TE/GE is responsible for, the program letter emphasizes the "big picture" focus on its mission to deliver quality customer service for taxpayers and stakeholders.

Treasury Department and IRS Fall Regulatory Agenda Released

Among the information noted by the Treasury Department release of its Fall Regulatory Agenda, the following items are of particular interest:

- Section 409A proposed rules are expected in December 2014 that will clarify certain provisions and address comments received. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1545-BL25

- Section 414(d) would provide proposed rules in December 2014 regarding the determination of governmental plans. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1545-BG43

- Proposed rules are also expected in December 2014 on retirement plans of Indian tribal governments. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1545-BI19

- Proposed regulations anticipated in December 2014 would provide guidance relating to the definitions of a bona fide severance pay plan under 457(e)(11) and substantial risk of forfeiture under 457(f)(1)(B). http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1545-BH72

- Final rules are due in March 2015 to provide guidance to a participant of the right, if any, to defer receipt of an immediately distributable benefit and the consequences of failing to defer receipt of the distribution. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1545-BH75

Department of Labor

Before It's Too Late Newsletter Published

On November 24, 2014, *Before It's Too Late* was released by Phyllis Borzi, Assistant Secretary for the Employee Benefits Security Administration (EBSA). http://www.dol.gov/ebsa/newsletter/ One article emphasizes the need to review and understand plan fees. Links to helpful resources are provided.

The following example is included to highlight the impact of fees on retirement savings:

> *Assume that you are an employee with 35 years until retirement and a current 401(k) account balance of $25,000. If returns on investments in your account over the next 35 years average 7 percent and fees and expenses reduce your average returns by 0.5 percent, your account balance will grow to $227,000 at retirement, even if there are no further contributions to your account. If fees and expenses are 1.5 percent, however, your account balance will grow to only $163,000. The 1 percent difference in fees and expenses would reduce your account balance at retirement by 28 percent.*

The newsletter also touts the launch of a new tool by the U.S. Commodity Futures Trading Commission (CFTC). *SmartCheck* is a campaign that connects investors to tools to check the registration, license and disciplinary history of certain financial professionals. http://smartcheck.cftc.gov/

Guidance Published Implementing Form 5500 Changes for Multiple Employer Plans

On November 10, 2014, the Department of Labor's Employee Benefits Security Administration published an interim final rule in the Federal Register to implement Form 5500 annual reporting changes for multiple employer plans required by the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC), enacted on April 7, 2014.
https://www.federalregister.gov/articles/2014/11/10/2014-26498/revisions-to-annual-returnreport-multiple-employer-plans

As explained in the press release, the CSEC Act established additional annual reporting requirements for multiple-employer plans for plan years beginning after December 31, 2013.
http://www.dol.gov/ebsa/newsroom/2014/EBSAnews110714.html Under the new requirements, a multiple-employer plan must include a list of participating employers and a good faith estimate of the percentage of total contributions made by each participating employer during the plan year, as part of the Form 5500 filing.

EBSA expects informational copies of the 2014 Form 5500 and Form 5500-SF to be published soon on EBSA's website at www.dol.gov/ebsa/5500main.htm

ERISA Advisory Council to Publish Recommendations Soon

The DOL News Brief dated November 6, 2014 reported on the ERISA Advisory Council meeting held on November 4, 2014. http://www.dol.gov/_sec/newsletter/2014/20141106.htm#.VHTdackXI6I
http://www.dol.gov/_sec/newsletter/2014/20141106.htm#.VHTdackXI6I Secretary of Labor, Thomas Perez, was briefed by the council on the preliminary findings of their 2014 projects. Reports on Outsourcing Employee Benefit Plan Services and Facilitating Lifetime Plan Participation will be published early in 2015.

Recalling the deleterious events resulting in the loss of pensions by many workers who had no recourse before the passage of the Employee Retirement Income Security Act of 1974, Secretary Perez praised the efforts of the ERISA Advisory Council and its role in protecting retirement benefits.

Fall 2014 Statement of Regulatory Priorities Released

On November 21, 2014, the Department of Labor's Fall 2014 Statement of Regulatory Priorities was released. http://www.reginfo.gov/public/jsp/eAgenda/StaticContent/201410/Statement_1200.html

According to the policy statement, the DOL is "pursuing a regulatory program that is designed to safeguard the retirement security of participants and beneficiaries by protecting their rights and benefits under pension plans and by encouraging, fostering, and promoting openness, transparency, and communication with respect to the management and operations of such plans."

Examples cited include:

- EBSA's rulemaking to help assure workers' retirement security by reducing harmful conflicts of interest in the retirement savings marketplace so that plan sponsors, workers, and retirees get impartial advice. The regulation would clarify the circumstances under which a person will be considered a "fiduciary" when providing investment advice related to retirement plans and individual retirement accounts, as well as to participants, beneficiaries, and owners of such plans and accounts. The second notice of proposed rulemaking is scheduled for release in January 2015. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1210-AB32

- EBSA continues to pursue initiatives to encourage the offering of lifetime annuities or similar lifetime benefit distribution options for participants and beneficiaries of defined contribution plans. Specific actions being taken include the following:

    - EBSA is developing a proposal relating to the presentation of a participant's account balance as a lifetime income stream of payments. The notice of proposed rulemaking is scheduled for July 2015. http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=1210-AB20

    - EBSA is also developing proposed amendments to a safe harbor regulation that will provide plan fiduciaries with more certainty that they have discharged their obligations under section 404(a)(1)(B) of ERISA in selecting an annuity plan provider and contract for benefit distributions from an individual account retirement plan. Noted as RIN 1201-AB58.

- EBSA's regulatory program also includes initiatives involving Standards for Brokerage Windows.

General Accounting Office

General Accounting Office Considers Multimillion Dollar IRA Accounts

In GAO-15-16 *IRS Could Bolster Enforcement on Multimillion Dollar Accounts, but More Direction from Congress Is Needed,* which was publicly released on November 19, 2014, the implications of hefty account balances for a small number of taxpayers was explored. http://www.gao.gov/assets/670/666595.pdf The report was directed to the Chairman, Committee on Finance of the U.S. Senate.

As explained in the highlights:

> *A small number of taxpayers has accumulated larger IRA balances, likely by investing in assets unavailable to most investors—initially valued very low and offering disproportionately high potential investment returns if successful. Individuals who invest in these assets using certain types of IRAs can escape taxation on investment gains. For example, founders of companies who use IRAs to invest in nonpublicly traded shares of their newly formed companies can realize many millions of dollars in tax-favored gains on their investment if the company is successful. With no total limit on IRA accumulations, the government forgoes millions in tax revenue. The accumulation of these large IRA balances by a small number of investors stands in contrast to Congress's aim to prevent the tax-favored accumulation of balances exceeding what is needed for retirement.*

In order to address these concerns, the GAO offers specific suggestions for action. As noted in the highlights, Congress should reconsider the legislative objectives for the use of IRAs. In addition, recommendations were made to the IRS, which agreed with these action steps, including approving plans to fully compile and digitize new data on nonpublicly traded IRA assets and seeking to extend the statute of limitations for IRA noncompliance.