Monthly IRA Updates

ED SLOTT AND COMPANY, LLC
America's IRA Experts

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?? Question of the Month: Can I convert part of an active SEP to a Roth IRA?

Q: I have an active SEP (Simplified Employee Pension) IRA. I've been hearing about the positives involved with Roth IRAs and would like to take advantage of the tax-free savings as soon as possible. Can I convert part of it to a Roth IRA right now?

A: As long as the SEP agreement allows you access to the funds (and most SEPs will allow you access), you can do a conversion from the SEP account to a Roth IRA. If you will be receiving future SEP contributions in the account, make sure that you leave enough money in the account to keep it active. Enjoy the benefits of a Roth IRA and make sure you have enough outside money to pay the tax on the conversion.

Disclaimer Plans, Disability Exceptions, Recharacterization Extenstions

The October issue of *Ed Slott's IRA Advisor Newsletter* highlights the IRS rules on the retirement account disclaimer plan.

This issue also talks about the disability exception to the 10% penalty, IRS' extension for 2010 estates and a Roth recharacterization extension for victims of Hurricane Irene.

READ MORE IN OCTOBER'S ISSUE OF ED SLOTT'S IRA ADVISOR NEWSLETTER

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Inside Ed Slott's IRA Advisor Newsletter

IRS Rules on Retirement Account Disclaimer Plan

- Executrix is Allowed to Make a Partial Disclaimer of Retirement Accounts
- Facts of the Case
- Review of Qualified Charitable Disclaimer Rules
- IRS' Decision
- Why This Disclaimer Made a Difference

Tax Court Rules Doctor is Not Disabled Under the Tax Code; Liable for $100K+ in Combined Penalties

- Simeon E. and Cynthia L. Issacs v. Commissioner
- Facts of the Case
- The Court's Decision - Isaacs is Not Disabled
- Tax Code Definition of Disability for Exception to the 10% Penalty

IRS Chart: Exceptions to the 10% Penalty

IRS Issues Additional Guidance for 2010 Estates and Their Beneficiaries and Extends Several Key Deadlines

Disasters Extend Roth Recharacterization Deadline for Some

If you are not already an Ed Slott IRA Advisor Newsletter subscriber, you can preview past issues before subscribing.

October Key Focus

Year-End IRA Deadline Falls on a Saturday

We recently informed you that the recharacterization deadline for 2010 Roth IRA conversions is generally October 15th of the year following the year of conversion. This year, however, the deadline is October 17th because the 15th falls on a Saturday.

Tax-related deadlines falling on a weekend or holiday are extended to the next business day. However, when December 31st falls on a weekend, like it does this year, the deadline is pushed up to the previous business day for year-end related issues.

The payment systems of many IRA custodians are programmed to pay month-end distributions on the first business day of the following month when the month-end falls on a non-business day. For these custodians, it means that distributions scheduled to be paid on **December 31, 2011 would instead be paid on January 2, 2012.** This would lead to tax penalties for those who must take required minimum distributions (RMDs) or 72(t) (substantially equal periodic payments) during the 2011 calendar year.

The problem for RMDs is the 50% penalty that is assessed on any missed payments. For example, if a $5,000 RMD scheduled to be paid on December 31, 2011 does not get distributed until January 2, 2012, the resulting penalty owed by the account owner is $2,500. Avoiding such a penalty in this case is a two-step process. First, a written request for a waiver of the penalty must be made to the IRS, providing a legitimate reason as to why the payment was late. Then cross your fingers and hope you catch the IRS case officer on a good day so that he or she agrees to your request.

A similar problem applies to 72(t) distributions that are supposed to be paid by the last business day of the year. If pushed to the beginning of the next year, the 72(t) would be considered modified, resulting in the IRA owner owing a 10% early distribution penalty on all distributions taken under the 72(t) program since its inception. The penalty would not apply to any distributions taken in accordance with the 72(t) program and made after you reached age 59 1/2.

A word of advice is in order if you are scheduled to receive one of these payments at year end. Check with your IRA custodian to ensure that it has taken appropriate steps to prevent the carry-over of payments to the next year. For regularly scheduled payments, a sure-fire way to avoid this problem altogether is to switch your payment date to the first day of the payment period. It is better to receive payments early than risk the imposition of tax penalties for events out of your control.

Ruling to Remember

Private Letter Ruling 201139011

A 13-year-old girl we will call "Michelle" lost her father in early September 2008. She was named the sole beneficiary of her dad's entire interest in a qualified retirement plan. She was entitled to have a direct trustee-to-trustee transfer made from her father's retirement plan to an IRA set up in her name.

However, Michelle's mother, as the surviving parent and legal guardian, made no attempt to follow that procedure and instead took a lump sum distribution and converted most of the funds to her own use.

The court stepped in and said, "Not so fast."

A conservator was named for the estate and Michelle to handle all financial matters. In addition, the court instructed the conservator to "seek assistance" in determining whether or not the taxes paid by Michelle on the lump sum distribution could be returned to the estate.

Since this case dealt with a minor beneficiary and an apparently irresponsible parent, IRS allowed for the remaining funds, including tax refunds, to be placed in a properly titled inherited IRA for the child. Normally, taxpayers are given 60 days to accomplish rollovers. IRS didn't place a time limit in this instance since the amended tax returns needed to be filed and total reimbursement had not yet been received from the parent.

LESSON TO LEARN:
This PLR provides both hope and a warning. If you are the guardian of an IRA beneficiary, you have obligations under the law, and you can be required to repay any funds that are misspent. Also, if you are representing a minor beneficiary who has been taken advantage of, perhaps a PLR can restore those misallocated funds to an inherited IRA.