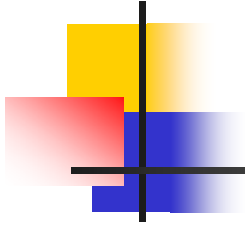


Update: IRA Laws & Rulings and related Tax Planning Strategies

Twila Slesnick
December 5, 2009

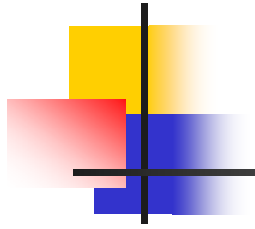


New Numbers



Contribution Limits

	2009	2010	With Catch-up 2009	2010
IRA	\$ 5,000	\$ 5,000	\$ 6,000	\$ 6,000
401(k), 403(b) Deferral portion	\$16,500	\$16,500	\$22,000	\$22,000
401(k), 403(b) Total (max)	\$49,000	\$49,000	\$54,500	\$54,500
SIMPLE IRA Deferral portion	\$11,500	\$11,500	\$14,000	\$14,000
SIMPLE IRA Total (max)	\$23,000	\$23,000	\$28,000	\$28,000



Income Thresholds/Phaseouts

	2009	2010
Roth Contribution		
Married	\$166,000 - 176,000	\$167,000 - 177,000
Single	\$105,000 - 120,000	\$105,000 - 120,000
Roth Conversion	\$100,000	No limit
Trad IRA Ded		
Married	\$ 89,000 - 109,000	\$ 89,000 - 109,000
Single	\$ 55,000 - 65,000	\$ 56,000 - 66,000
Non partic sp	\$166,000 - 176,000	\$167,000 - 177,000



Modified AGI

- For Roth IRA conversions and contributions and for traditional IRA deductibility, MAGI is the same in these respects:
 - Add back foreign earned income & housing
 - Add back IRA deduction
 - Add back student loan interest deduction
 - Add back income from U.S. savings bonds used for higher education expenses
 - Add back employer-paid adoption expenses
 - Add back domestic production deduction



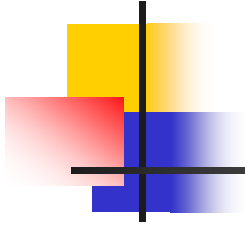
Modified AGI

- ...but different in these respects:
 - Roth IRA Contributions
 - Exclude amounts converted to Roth IRA
 - Roth IRA Conversions
 - Exclude converted amount
 - Exclude IRA distribution (including from SEP & SIMPLE) required because age 70½
 - Do not exclude RMD from inherited IRAs
 - Do not exclude RMD from other types of plans



Modified AGI

- NB: Traditional IRA Deductibility
 - Do not exclude converted amount
 - Do not exclude any RMD



New for 2009



Waiver of RMD Requirement

2009 Tax Year

- Required minimum distribution (RMD) requirement waived for 2009 only
- Applies to the following plans:
 - Defined contribution plans, such as 401(k) plans and other profit sharing plans
 - 403(a), 403(b), and 457 plans (of DC type)
 - IRAs (traditional & Roth)
- Applies to all RMDs from these plans, whether lifetime distributions or post-death distributions (to beneficiaries)



Waiver of RMD Requirement

First RMD

- Suspends RMDs that are for the 2009 tax year only
 - If you turned 70½ in 2008 and waited until 2009 to take your distribution, you must still take it by April 1, 2009



Waiver of RMD Requirement

First RMD

- If you turn 70½ in 2009, you are not required to take a distribution for 2009.
 - However, your 2010 distribution is deemed to be your second distribution.
 - i.e. no grace period to April 2011



Waiver of RMD Requirement

First RMD

- Beneficiary who inherited IRA in 2008
 - First distribution required in 2010
 - 2010 deemed 2nd distribution year
 - To compute 2010 distribution
 - Find factor based on beneficiary age in 2009
 - Reduce that factor by one
 - Reduce factor by one in each subsequent year.



Waiver of RMD Requirement

Additional Details

- If you are taking distributions under the five-year rule and 2009 is one of the five years, you may extend the period by a year.
 - Original owner died before RBD
 - No designated beneficiary
 - You inherit (perhaps as beneficiary of estate)



Waiver of RMD Requirement

Additional Details

- If you receive a distribution from an employer plan during 2009 that would have been an RMD but for the waiver:
 - The distribution is not subject to direct rollover requirements (i.e. employer not required to offer direct rollover)
 - The distribution is not subject to mandatory withholding
- Caution: the above applies only to the portion of the distribution that would have been an RMD for 2009



Waiver of RMD Requirement

Tax Strategy

- Suppose you will take an IRA distribution to use up lower tax bracket
- Ok to convert that distribution to Roth provided
 - MAGI under \$100k
 - Not MFS
- Because no RMD requirement, entire distribution may be converted (subject to above restrictions)



Charitable Donations From IRA

Charitable Donations From IRAs



- Through tax year 2009 only
- Applies to donations from traditional and Roth IRAs
 - Not SIMPLE
 - Not SEP
- Donors must be at least age 70½ (i.e. Donation must be made on or after the **day** you turn 70½)



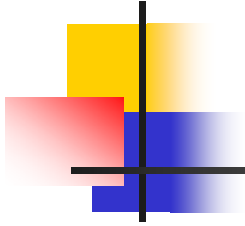
Charitable Donations From IRAs (cont'd)

- Each individual may donate up to \$100,000 each year
- The amount of the donation is excluded from income (i.e. no deduction)
- Treated as a distribution, hence can satisfy RMD



Charitable Donations From IRAs (cont'd)

- Should you donate from IRA in 2009?
 - No RMD requirement so can keep AGI down by not taking distribution
 - If plan to donate anyway and IRA is preferred source, then provides tax-favored option for donating from IRA.



New for 2010



Bankruptcy Protection



Bankruptcy Protection

- BAPCPA (Bankruptcy Abuse Prevention & Consumer Protection Act of 2005)
 - Applies only to bankruptcies
 - Protects contributory traditional & Roth IRAs to \$1 million
 - Unlimited protection for Keoghs, SEPs & SIMPLE IRAs
 - Unlimited protection for rollover IRAs containing
 - Qualified plan assets
 - 403(b) & 457 plan assets
 - NB: Brings back the conduit IRA



Bankruptcy Protection

- ***Not* Covered by BAPCPA**
 - Inherited IRAs (per 2007 R. Jarboe case)
 - SEP & SIMPLE IRA assets rolled over to traditional IRA
 - This is odd
- **Unresolved**
 - IRAs rolled to qualified plan
 - IRAs rolled to QP and out again



Bankruptcy Protection

- IRA Exemption Amount
 - Adjusted for inflation every 3 years
 - \$1 million was indexed on 4/1/07
 - Current exemption: \$1,095,000
- New exemption amount
 - Announced in early 2010
 - Will take effect 1 April 2010



Rollover to IRA by Nonspouse Beneficiary



Rollover to IRA by Nonspouse Beneficiary

- Part of Pension Protection Act
- Effective 2007: Nonspouse beneficiary may roll inherited qualified plan assets to IRA
 - Must be new IRA in name of decedent (inherited IRA)
 - No commingling with other IRAs
 - Must be trustee-to-trustee transfer from plan to new IRA
 - Does not apply to IRA-to-IRA rollovers, only plan-to-IRA rollovers.



Rollover to IRA by Nonspouse Beneficiary

- Plan rules govern
 - Rollover must be permitted by plan
 - Plan not required to provide direct rollover option.



Rollover to IRA by Nonspouse Beneficiary

- If plan has 5-year rule requirement, can void it by taking the beneficiary's first required distribution from plan no later than December 31 of year after death.



Rollover to IRA by Nonspouse Beneficiary

- Required distribution rules (Section 401(a)(9)) apply to new IRA
 - IRA titled as inherited IRA
 - Distribution over life of beneficiary
 - First distribution required by December 31 of year after death



Rollover By Nonspouse Beneficiary (cont'd)

- New for 2010
 - “Eligible rollover distribution” includes distribution to nonspouse beneficiary
 - Eligible rollover distribution rules apply as long as 402(c)(11) satisfied (re rollover to inherited IRA)
 - ...including requirement that the employer must permit direct rollover



Summary

- PPA allowed nonspouse beneficiary transfers from qualified plan to an inherited IRA (if plan permits)
- Beginning 2010, plan *must permit* such transfers



Reminder

- **Notice 2008-30** states that Roth IRAs are also eligible to receive such distributions
 - Conversion from plan to Roth IRA permitted for spouse and nonspouse beneficiaries
 - Beware:
 - For nonspouse, must be trustee-to-trustee transfer
 - For nonspouse, Roth IRA must be inherited Roth IRA



Reminder (cont'd)

- NB: Does not apply to **IRA-to-Roth IRA** conversions
 - Spouse can do it in two steps (make IRA her own; then convert to Roth)
 - Nonspouse cannot do it at all

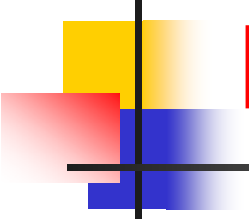


Rollover By Nonspouse Beneficiary (cont'd)

- Tax Benefit (what's the big deal?)
 - Avoids lump sum distribution of qualified plan assets, which was common under old rules.
 - Beneficiary may take distributions over own life expectancy
 - Allows conversion of qualified plan to Roth IRA

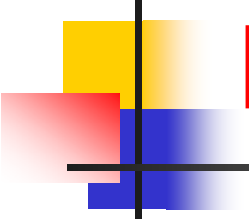


Rollover from Qualified Plan to Roth IRA



Rollover from qualified plan to Roth IRA

- Old rule
 - Roll first to IRA, then convert
 - IRA aggregation rule applies to basis recovery
- New law beginning in 2008
 - Roll directly from plan to Roth IRA
- Conversion rules will apply
 - AGI limit is \$100,000 until 2010



Rollover from qualified plan to Roth IRA (cont'd)

- May convert directly to a Roth IRA from:
 - Traditional IRA (including SEP)
 - SIMPLE (after two years)
 - Qualified plan
 - 403(a) plan
 - 403(b) plan
 - 457 plan
- No intermediate step required



Plan-to-Roth IRA Tax Strategy

- Tax strategy (in 2008 and beyond):
 - Roll only after-tax amounts to Roth IRA
 - No aggregation rule for qualified plans
 - Hence, no tax liability
- How it should work
 - Distribute entire QP
 - Deposit pretax money in traditional IRA first
 - Then, deposit after tax money in Roth



Strategy (cont'd)

- Why it should work
 - Section 402(c)(2)
 - Rollover is treated as “consisting first of the portion of the distribution that is includible in gross income.” (i.e. the pre-tax portion)



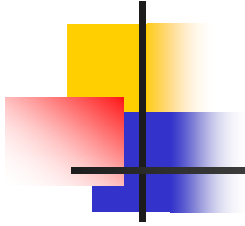
Easier Variation of Strategy

- If plan permits distribution of only after-tax amounts, no tax on conversion
- PLR 200909074 Facts:
 - QP contains provisions for Mandatory, Discretionary (catch-up), and Voluntary contributions
 - All are after-tax
 - Plan allows distribution of any of these contributions (and allocable interest) in lump sum



Easier Variation (cont'd)

- Ruling
 - Distributions of these contributions may be rolled to a Roth IRA
 - Interest portion subject to tax



Conversions



Conversion Eligibility Rules 2009

- Modified AGI of \$100,000 or less
 - Same threshold for marrieds and singles
- Not married filing separately
 - MFS ineligible



Conversion Eligibility After 2009

- Beginning in 2010, there will be no income restrictions on Roth IRA conversions.
- Beginning in 2010, even MFS will be eligible to convert

Additional 2010 Conversion Rules



- Averaging for 2010 conversions only
 - Income included ratably over two years: 2011 and 2012
 - You may elect not to average, but averaging is default



Roth IRA Strategy #1

- Beginning in 2010, no income restrictions on Roth IRA conversions
- However, income limits on Roth IRA **contributions** still in place
- Conclusion: Can circumvent the limit on Roth contributions by contributing to a traditional IRA and then converting it to a Roth IRA.



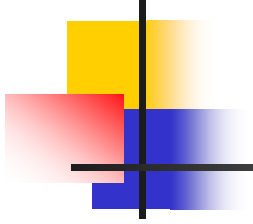
Roth IRA Strategy #2

- When converting IRA to Roth IRA, must allocate pro-rata portion of converted amount to basis.
- But...suppose you roll over your IRA to your qualified plan
- Section 408(d)(3)(A)(ii) limits rollover (if to QP) to taxable portion

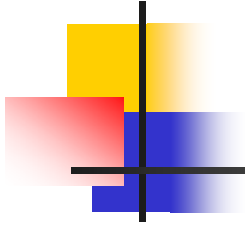


Roth IRA Strategy #2 (cont'd)

- Therefore, all that remains in the IRA is the after-tax portion, which you can then convert to a Roth tax-free
- Caveats & Cautions:
 - Plan must accept rollover from IRA – in particular contributory IRA
 - If you have a SEP or a SIMPLE IRA, it must be taken into account when computing the tax-free portion of a conversion



IRS Rulings



Restorative Payments



Restorative Payments

- In the beginning: Rev Rul 2002-45
 - Employer made risky investment
 - Service permitted employer to restore loss to the plan
 - Treated as “restorative payment” instead of contribution



Restorative Payments

- PLRs 200705031 & 200719017 seem to extend the privilege to IRAs.
- Fine print:
 - Restorative payment is for breach of fiduciary duty, not for normal market losses
 - Restorative payment cannot exceed loss (but can include adjustment for lost earnings)

The End

- Questions?

