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Re: New IRS Guidance – IRA Amendments Not Required For Now

Dear Clients and Other Friends:

Individual Retirement Account (“IRA”) sponsors have been awaiting guidance from the IRS about IRA amendment requirements for some time. IRA prototype agreements have not been required to be amended since 2002 and IRS-provided IRA model form agreements are out of date with recent law changes.

Generally, IRS-provided model IRA agreements are available for IRA sponsors that wish to use a pre-approved agreement to establish an IRA without using a prototype agreement. A prototype IRA agreement is drafted by the IRA sponsor and submitted to the IRS for approval. When a prototype IRA agreement is approved by the IRS, the IRS issues a favorable opinion letter for that prototype agreement.

Last week, the IRS issued Revenue Procedure 2010-48 to establish current amendment requirements for IRAs. In a twist from the typical IRS approach to amendment requirements for tax-qualified retirement plan documents, Rev. Proc. 2010-48 establishes a new rule providing that IRA agreements do not need to be amended for various law changes since 2002 for IRA sponsors to take advantage of such law changes.

New Amendment Rules for IRS-provided model IRA documents

- Model IRA agreements need not be amended for the law changes since 2002 as noted in the revenue procedure. Though not required, the IRS recommends that the IRA sponsor adopt the latest available model IRA agreement.
- The IRS revenue procedure states that revised model IRA agreements will be available soon on the IRS’ website (www.irs.gov). These model IRA agreements are: IRA trust account (Form 5305); IRA custodial account (Form 5305-A); Roth IRA trust account (Form 5305-R); Roth IRA custodial account (Form 5305-RA); Roth IRA annuity endorsement (Form 5305-RB); SIMPLE IRA trust account (Form 5305-S); and SIMPLE IRA custodial account (Form 5305-SA).
- In addition to providing revised agreements for existing model IRA agreements, the IRS will make available new model IRA agreements for the following arrangements: Traditional IRA annuity endorsement (Form 5305-B) and SIMPLE IRA annuity endorsement (Form 5305-SB).

New Amendment Rules for prototype IRA documents

- Prototype IRA agreements do not need to be amended for various law changes since 2002 even if IRA sponsors take advantage of interim law changes. The statutory changes since 2002 are listed in the revenue procedure.
- A prototype IRA agreement that is amended just to incorporate statutory changes since 2002 may continue to rely on its previous favorable opinion letter that addressed changes through 2002.
- A prototype IRA sponsor may apply for an IRS opinion letter at any time, including after amending only to incorporate the statutory changes since 2002. To receive a favorable opinion letter, prototype IRAs should use applicable language from the IRS *Listing of Required Modifications* (“LRMs”). LRMs are available at the IRS website.
- Prototype sponsors of individual retirement annuities that use one IRA endorsement with one or more annuity contracts may submit only the IRA endorsement (and not the contracts) for approval when applying for an opinion letter. If the IRS approves the application, it will issue a favorable opinion letter to the sponsor referencing the IRA endorsement. This change reduces the sponsor user fees and the number of opinion letters the IRS issues for such annuity arrangements.
- When applying for an opinion letter from the IRS, an IRA sponsor must submit an IRA prototype agreement with IRS Form 5306, *Application for Approval of Prototype of Employer Sponsored Individual Retirement Arrangement (IRA)*. Form 5306 includes a checkbox to identify a “dual-purpose” IRA application – in situations where an opinion letter is for a prototype IRA document designed to be used as either a Traditional IRA or a Roth IRA.

Action Steps for IRA Sponsors

1. Review IRA agreements to identify prototype and model IRAs currently supported by the sponsor.
2. Though not required under this new revenue procedure, we suggest that IRA sponsors consider amending IRA agreements from time-to-time. Adopting revised agreements helps IRA sponsors administer IRA provisions and helps IRA owners understand the terms applicable to their IRAs.
3. If amendments are to be made, a project plan should be established to amend prototype and/or model IRA agreements (as applicable) and to notify IRA owners of amendments. As necessary, IRA document specialists should be consulted regarding document language or other requirements.
4. Review IRA disclosure statements that are provided for each type of IRA supported by the IRA sponsor. Generally, IRA sponsors should review IRA disclosure statements regularly (at least annually) and revise disclosure statements as necessary to include current IRA rules.
5. To help assure that IRA administration practices satisfy current legal and administrative requirements, IRA sponsors should periodically review ancillary forms, procedures and systems.
6. Monitor future legislation and IRS guidance for any new IRA rules, including any new document/amendment requirements.

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Conclusion

There are several different types of IRAs: Traditional IRAs, Roth IRAs, SIMPLE IRAs and SEP-IRAs. According to the Investment Company Institute, IRAs held \$4.2 *trillion* in assets as of June 30, 2010. Due to the large and growing amount of assets in IRAs and the specialized rules applicable to these accounts, IRA sponsors must focus on properly administering these accounts to maintain standards for customer service and compliance.

Please contact us if you would like additional information or if you may need assistance in addressing IRA document and compliance requirements.

Sincerely,

Ted Rice