2014 EMPLOYEE BENEFITS UPDATE

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Dollar Limits

- 401(k) Elective Deferrals: $17,500 in 2014; $18,000 in 2015
- 401(k) Catch Up: $5,500 in 2014; $6,000 in 2015
- 401(a)(17) Compensation Limit: $260,000 in 2014; $265,000 in 2015
- 415 Annual Addition Limit: Lesser of 100% of comp or $52,000 in 2014/$53,000 in 2015, PLUS catch up contributions

- Deduction Limit: 25% of compensation PLUS 401(k) deferrals
- Social Security Taxable Wage Base: $117,000 in 2014; $118,500 in 2015
- Dollar limit for Highly Compensated Employee: $115,000 in 2014; $120,000 in 2015
- Simple IRA Deferral: $12,000 in 2014/$12,500 in 2015, plus age 50 catch up contribution $2,500 in 2014/$3,000 in 2015
- IRA contribution limit for 2014 and 2015 is $5,500, or $6,500 if age 50
- Roth IRA contribution phase-out: for married couples filing jointly, $181,000 - $191,000 in 2014 to $183,000 - $193,000 in 2015. For singles and heads of household, $114,000 - $129,000 in 2014 to $116,000 - $131,000 in 2015

Professional Practice Safe Harbor 401(k) Profit Sharing Plan

- 401(k) elective deferral, with catch ups
- 3% of comp safe harbor contribution
- 7% of comp profit sharing contribution, plus 5.7% SS integration

Contribution for 50+ year old partner in 2015 with $275,000 comp:

- Elective deferral: $18,000 (not subject to ADP test)
- Catch up: 6,000
- Safe harbor 7,950 ($265K X 3%)
- Profit sharing 18,550 ($265K X 7%)
- SS integration 8,350 (($265K - $118.5K) X 5.7%)
- Total $58,850 (within $53K annual addition limit plus $6K catch up)

IRS Guidance Shows Importance of Safe Harbor Notice

Safe Harbor Contributions to 401(k) plan:

- Purpose is to avoid ADP discrimination testing.
- Employer must make either safe harbor matching contribution or safe harbor nonelective contribution.
  - Nonelective = 3% of comp
  - Match = (1) 100% of employee's deferral up to 3% of comp plus 50% of deferral between 3% and 5% of comp, or (2) 100% of employee's deferral up to 4% of comp.
- Safe harbor contribution must be 100% vested and can't be subject to 1,000 hours of service or last day of plan year employment.
- Employer must give written safe harbor notice at least 30 days before beginning of each plan year.

- Must use nondiscriminatory definition of compensation.

IRS Retirement News - 2/2014:

- Failure to provide safe harbor notice is operational violation for failure to follow plan terms – just can't convert to ADP testing. Must be corrected.
- Correction differs depending on how employee affected.
  - Employees who got prior year notices and continued to defer consistent with past are okay. Correct by modifying procedures to make sure failure doesn't happen again.
  - If plan uses safe harbor match, make-up contributions required for employees who didn't get prior notices or otherwise didn't get sufficient info to make informed judgment.
    - Must make up "missed deferral opportunity", equal to ½ of greater of (a) 3% of comp, or (b) deferral % for which employer matches 100%.
    - Must also match missed deferral opportunity.

- Example: Plan uses 100% safe harbor match up to 4% of comp. Bill makes $40,000 and never received safe harbor notice. Make-up contribution is:
    - 1/2 of $40,000 X 4% = $800 missed deferral opportunity, plus
    - $800 match

Plan Amendments

- Qualified retirement plans must be amended periodically to reflect new legislation and IRS regs.
- Last round of amendments occurred in 2008-09 and was referred to as "EGTRRA" amendments.
- Today, great majority of plans are pre-approved prototype plans.
- Rev. Proc. 2007-44 adopted 6-year amendment cycle for pre-approved prototype and volume submitter plans.
- Plan sponsors submit new documents to IRS for approval, and once approved, adopting employers must restate.

- Announcement 2014-16: IRS set next employer restatement period for May 1, 2014 – April 30, 2016.
- All pre-approved prototype retirement plans must be amended and restated during this period.
- Referred to as “Pension Protection Act” (PPA) restatements.
- Individual submission of employer plans to IRS not required, but those choosing to must do so within 2-year window.

New IRS Notice provides Qualified Plan to Roth IRA Rollover Opportunity

- Notice 2014-54 provides qualified plan participants with after-tax accounts more flexibility in planning for distributions.
- Some plans allow after-tax employee contributions:
  - Can't exceed annual addition amount less other contributions.
  - HC employees subject to discrimination test.
  - Earnings are tax-deferred until distributed.
  - Basis for after-tax contribution amount not taxed.
  - Under Code Sec. 72(e), each partial distribution of account balance carries out pro rata part of pre-tax and after-tax money.
  - However, after-tax contribution accounts eligible for "separate contract" treatment where only after-tax account contributions/earnings considered. when withdrawal from account made. 72(d)(2); Notice 87-13.
  - Example: $100K total plan balance; $25K after-tax contrib acct includes $5K earnings.

- Under 2014-54, all plan disbursements scheduled to occur at same time are treated as single disbursement.
  - If pre-tax amount less than amount rolled over, entire pre-tax amount considered to be rolled over.
  - If there are multiple rollovers as part of same disbursement, participant can allocate pre-tax and after-tax amounts between them.
- Example:
  - Sam has 401(k) consisting of $500,000 total plan balance including $100,000 after-tax contribution account with $80,000 basis.
  - Under 2014-54, Sam can take in-service withdrawal of $100,000 after-tax account and roll $80,000 basis to Roth IRA and $20,000 to traditional IRA, all without tax.
  - Before 2014-54, each distribution would carry pro rata basis/earnings.
- Great way for NHC employee or single participant self-employed owner to contribute to Roth in excess of limits.

Missing Participants – EBSA Field Assistance Bulletin 2014-01

- DOL revised prior guidance relating to missing participants of terminating defined contribution plans.
- Reasonable efforts must be made to locate missing participants, and reasonable costs of locating may be charged to their accounts.
- The following mandatory search methods must be used:
  - a. Certified mail to last known address.
  - b. Other records of employer and its plans must be checked.
  - c. Must check with designated beneficiaries.
  - d. Must make reasonable use of electronic search tools, including internet engines, public record databases, and social media.

- If participant still cannot be located, following distribution methods may be used:

  a. Preferred method is automatic rollover in accordance with DOL Reg. 2550.404a-3.

  b. Federally insured interest-bearing accounts.

  c. Escheat to state unclaimed property fund.

- 100% tax withholding method may not be used.

Tax Court Confirms Plan Loan Offset subject to 10% Early Withdrawal Tax

Plan Loan Basics:

1. Unless loan from plan to participant meets specific requirements, it is taxable deemed distribution.

2. Requirements of qualifying plan loan:

- Must be documented by enforceable agreement.
- When combined with other loans to same participant, must not exceed greater of $10,000 or 50% of vested balance, subject to maximum of $50,000 reduced by highest loan balance during past year.
- Must be repaid at least quarterly using level amortization over period of not more than 5 years, unless it is used to acquire principal residence (not including refinancing).

3. At termination of employment, participant may repay loan and roll over repayment proceeds. Participant cannot roll over loan itself.

4. If participant fails to repay loan, it is offset against account at time of distribution, resulting in taxable distribution.

<u>Tax Court Summary Opinion 2014-84</u>:

- David, age 49, had $128,000 401(k) balance, including $36,000 plan loan.
- Upon termination, David didn't repay loan and requested distribution of account.
- Plan administrator offset loan and distributed $92,000 less tax withholding.
- David argued 10% premature distribution tax shouldn't apply to offset amount. Tax Court disagreed and applied 10% tax.

IRS OKs Late Rollover of Plan Loan Offset to IRA

1. Under Reg. 1.402(c)-2, plan loan offset is eligible rollover distribution – other cash up to offset amount can be rolled over within 60 days of date of offset.

2. In PLR 201407027, taxpayer was terminated and TPA financial institution advised he could leave his account intact and continue to pay loan. However, shortly thereafter plan loan was offset pursuant to plan requirements. Taxpayer didn't discover until 60 days passed.

3. IRS agreed to waive 60-day rollover period due to bad advice from financial institution. Allowed taxpayer to defer tax by paying cash equivalent into his IRA.

RMD Developments

A. Review of 401(a)(9) Required Minimum Distribution Rules.

1. Lifetime distributions.

- Distributions from plans and traditional IRAs must commence no later than required beginning date (RBD) and continue annually thereafter.
  - RBD for IRA and for 5% owner in qualified plan is April 1 of year after year reach age 70 ½.
  - RBD for non-5% owner in qualified plan is April 1 of year after year reach age 70 ½ or retire, whichever is later.
- Roth IRAs are exempt from RMDs during owner's life.
- RMDs based on uniform life expectancy table based on two lives that recalculates each year.

2. Distributions to beneficiaries after death.

- If surviving spouse is beneficiary, spouse can rollover to spouse's own IRA and delay RMDs to spouse's RBD. Or, spouse can elect to wait until owner would have reached age 70 ½ and then receive annual payments over own single life expectancy, recalculated annually.

- If spouse rolls over to own IRA, spouse can name own beneficiaries – treated as spouse's IRA for all purposes.

- If non-spouse is named beneficiary and death occurs before owner's RBD, all benefits must be distributed within 5 years after owner's death ("5-year rule"), except beneficiary can receive RMDs over beneficiary's life expectancy if RMDs commence by Dec. 31 of year after death and continue annually based on IRS single life table.

- If non-spouse is named beneficiary and death occurs after owner's RBD, annual RMDs must continue and be distributed over longer of owner's remaining life expectancy (based on age in year of death) or beneficiary's life expectancy, based on IRS single life table.

- Ability of young beneficiary to stretch out payments results in significant tax deferral (“stretch IRA”).
- If multiple beneficiaries are named in beneficiary designation, each can transfer his or her share to own inherited IRA and receive RMDs over own life expectancy by commencing by 12/31 of year after year of death (“separate share rule”).
    - If beneficiary designation gives specific amounts rather than percentage shares, separate share rule doesn’t apply and must use oldest life expectancy.
- If beneficiary is qualifying trust with multiple individual beneficiaries, separate share rule doesn’t apply and RMDs to trust based on life expectancy of oldest trust beneficiary.
- If individual trust beneficiaries are not identifiable or one of beneficiaries is charity, estate, or other non-individual, life expectancy payments not permitted and must use 5-year rule (if death before RBD) or owner’s remaining life expectancy (if death after RBD).

B. PLR 201423043 – Spouse could roll over Roth IRA payable to trust she controlled.

- Fred had 2 Roth IRAs. He named his revocable trust as beneficiary.
- Fred's wife, Ethel, was Trustee of trust after Fred's death. Trust divided into family trust and marital trust for Ethel. Ethel had power as Trustee to distribute principal of marital trust to herself for any reason. However, distributions from family trust only available for health, support, or maintenance.
- Ethel proposed to allocate other assets to family trust and 2 Roth IRAs to marital trust. Then, Ethel proposed to withdraw Roth IRA money and roll over to Ethel's own Roth IRA.
- IRS noted spousal rollover generally not permitted when trust is named beneficiary. Normally, RMDs from Roth IRA would be required annually over Ethel's life expectancy.
- However, IRS held because Ethel was sole Trustee and had authority to pay IRA proceeds to herself, she could receive IRA proceeds and rollover to own Roth IRA.
- Therefore, no Roth IRA distributions required during Ethel's life.

C. PLR 201406023 – Taxpayer could fix RMD taken from SEP-IRA rather than qualified plan.

- Jack had qualified plan account, SEP IRA, and traditional IRA. When Jack reached RBD, financial advisor told him he could take cumulative RMDs for all 3 from traditional IRA.

- Under 401(a)(9), RMDs for multiple IRAs can be taken from one of them. But, RMDs from qualified plan account can't be taken from IRA instead.

- Jack faced 50% penalty tax if failed to take plan RMD, so he took RMD from plan in time to avoid penalty.

- Although 60-day rollover period had expired, IRS allowed Jack to roll qualified plan RMD taken from IRA back into IRA.

- Ruling based on incorrect advice given by financial advisor.

D. PLR 201417027 – IRS refused to extend RMD start date despite late notice.

- Carl died before his RBD. Named his 2 sisters as beneficiaries of 401(k) plan.
- Plan stated that if sisters didn't elect 5-year rule by end of year after death, life expectancy rule deemed to apply.
- Sisters weren't notified by executor they were beneficiaries until after 1st RMD due.
- Sisters requested extension of time to make 1st RMD. IRS stated it didn't have authority to do so and said 50% penalty would apply.
- However, IRS said sisters could apply separately for waiver of penalty for reasonable cause under Code Sec. 4974(d).

E. <u>Treasury Dept Release 9673 (7/1/14)</u> - RMD regs amended to allow Qualified Longevity Annuities.

- Under prior regs, if annuity contract held in plan or IRA, value must be used to calculate RMDs.
- New regs address concern that some participants need protection from outliving benefits due to RMDs.
- 2014 amendment to 401(a)(9) regs allows plan or IRA to buy "qualified longevity annuity contract" (QLAC), value of which not included in calculating RMDs.
  - Annuity can't commence payments before age 85.
  - Premium limited to lesser of $125,000 or 25% of account (traditional IRAs are aggregated).
  - Only annuity benefit payable after annuitant's death is life annuity payable to designated beneficiary.
  - May provide for "return of premium" death benefit equal to total premiums paid in excess of total annuity payments.

5TH Circuit finds RBC Deferred Comp Plan Subject to ERISA

Tolbert v. RBC Capital Markets (2014, CA5):

- RBC had nonqualified deferred comp plan with 3 sources of contributions:
  - Voluntary deferrals (fully vested)
  - Mandatory deferrals (vested on dates selected by comp committee)
  - Company contributions (vested on dates selected by comp committee)
  - Mandatory deferrals and company contributions forfeited if participant terminated from employment for cause or without satisfying certain requirements
- Brenda, Joe, and Larry's accounts were forfeited upon termination. They sued claiming plan violated ERISA's vesting requirements.

- RBC claimed plan wasn't subject to ERISA.
- Under ERISA Sec. 3(2)(A), plan is ERISA pension benefit plan if it either (a) provides retirement income to employees, or (b) results in deferral of income extending to end of covered employment or beyond.
- ERISA exempts "top hat plans" from contribution, vesting, and many other ERISA requirements. Top hat plan is plan maintained "for select group of management or highly compensated employees."
- Court held that plan was ERISA benefit plan under 2nd prong of Sec. 3(2)(A) since it allowed deferral of income to and beyond end of covered employment.
- Brenda was administrative assistant so plan likely was not top hat plan. Court remanded back to lower court on this issue.
- Assuming plan didn't meet top hat definition, forfeiture was illegal and Brenda, Joe, and Larry were vested.

Court Decisions regarding Fiduciary Duties in Employer Stock Cases

- ERISA Sec. 404(a) creates standards of conduct for plan trustees and other fiduciaries, including:
  - Duty of loyalty
  - Duty to act as prudent person with experience in such matters would act in similar situation ("prudent expert standard")
  - Duty to act for exclusive purpose of providing benefits to beneficiaries
  - Duty to diversify investments in order to avoid large losses

- Sec. 404(a)(2) exempts ESOPs and other defined contribution plans from duty to diversify with respect to employer stock held in plan, but other duties still apply.

- Therefore, employer stock liability cases frequently based on allegations of violation of prudence.

- Fifth Third Bancorp v. Dudenhoeffer, 2014 WL 2864481. Major 2014 U.S. Supreme Count case - overturned 7 circuits in holding that plan fiduciaries have no "presumption of prudence" in decisions to buy, hold, or sell employer stock in plan.

- Tatum v. RJR Pension Investment Committee, 2014 WL 3805677. Fourth Circuit held that fiduciaries required to show that prudent fiduciary "would have" rather than "could have" made same decision regarding holding company stock in plan.

Tax Court Decision Results in Change to One Rollover per IRA per Year Rule

- Some like to use IRAs for short-term loans.
- Code Sec. 408(d)(3)(B) states that IRA distribution cannot be rolled over if taxpayer rolled over another IRA distribution within last 12 months.
- Until recently, everyone thought this rule applied separately to each of taxpayer’s IRAs.
  - Proposed Reg. 1.408-4(b)(4)(ii) and Publication 590 stated as much.
  - Publication 590 example: Chris has IRA 1 and IRA 2. On Date 1, Chris makes tax-free rollover from IRA 1 to IRA 3. Chris cannot, within 1 year of Date 1, make tax-free rollover from either IRA 1 or IRA 3. But, Chris can make tax-free rollover from IRA 2 within that year since Chris has not, within last year, made tax-free rollover from or into IRA 2.

- Tax Court adopted different rule in Bobrow, TC Memo 2014-21.
- IRA transactions by Alvan and Elisa Bobrow:
  - April 14 – Alvan took $65,064 from IRA 1
  - June 6 – Alvan took $65,064 from IRA 2
  - June 10 – Alvan deposited $65,064 into IRA 1 from personal acct.
  - July 31 – Elisa took $65,064 from her IRA
  - Aug. 4 – Alvan deposited $65,064 into IRA 2 from joint acct
  - Sept. 30 – Elisa deposited $40,000 into her IRA from joint acct
- Court ruled June 6 distribution was taxable on basis that all IRAs must be aggregated for one-rollover-per-year rule. Court also ruled Elisa's Sept. 30 deposit was too late to constitute rollover (61 days).
- After Bobrow decision, IRS issued Announcement 2014-15:
  - IRS to withdraw Proposed Reg and revise Pub. 590 consistent with Bobrow.
  - IRS will delay applying Bobrow rule to distributions made after Jan. 1, 2015.

- Thereafter, IRS issued Announcement 2014-32:
  - Distribution occurring in 2014 that was rolled over is disregarded in determining whether 2015 distribution can be rolled over, provided 2015 distribution is from IRA than neither made nor received 2014 rollover.
    - Example: Sue gets $50,000 distribution from IRA 1 on 12/15/14 and completes rollover to IRA 2 on 2/1/15. Sue can receive IRA 3 and rollover back into IRA 3 on 3/1/15 (or any other date in 2015).
  - Rollover from traditional IRA to Roth IRA (conversion) not subject to one rollover per year rule and is disregarded. But, rollover of Roth IRA to another Roth IRA precludes any other rollovers (including between traditional IRAs) during 12 month restricted period.
  - One rollover per year rule doesn't apply to rollovers to or from qualified plan.
  - One rollover per year rule doesn't apply to direct trustee-to-trustee transfers between IRAs.

U.S. Supreme Court finds Inherited IRAs Not Protected in Bankruptcy

- Clark v. Rameker, U.S. Supreme Ct (7/12/2014).
- ERISA protects qualified plan balances from creditor claims. ERISA is not applicable to IRAs.
- Heidi named as sole beneficiary of mother's $450,000 IRA. She transferred to inherited IRA. Heidi made withdrawals, but IRA still held $300,000 when she filed bankruptcy.
- Federal bankruptcy exemption exempts "retirement funds" – IRA originally created and funded by debtor clearly qualifies. At issue was whether exemption applies to inherited IRAs created by beneficiaries.
- Supreme Ct held exemption did not apply to Heidi as beneficiary since:
    - RMDs required well before retirement.
    - Beneficiary cannot make contributions to inherited IRA for retirement.
    - There is no tax penalty for withdrawing funds before retirement and no limits on what funds can be spent on.

- Rameker is not end of story – apparently Heidi resided in state that applies federal bankruptcy exemptions. Under bankruptcy laws, states can either apply federal exemptions or "opt out" and apply own exemptions.
- Almost 40 states have opted out of federal exemptions.
- NC has opted out and applies NCGS 1C-1601(a)(9), which fully exempts traditional and Roth IRAs from creditor claims and goes on to say:
    - "Any money or other assets … in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries by reason of a direct transfer or eligible rollover that is excluded from gross income …."
- NC exemption applies only to NC residents. In states where inherited IRAs not exempt, consider designating spendthrift trust as beneficiary for benefit of child or other heir.
- In state applying federal exemption, spousal rollover to spouse's own IRA should be exempt, since it is treated as spouse's IRA for all purposes and none of Supreme Court's rationales would apply.

Debtor's Self-Directed IRA Exempt from Bankruptcy Estate

- In re Cherwenka, 2014 WL 1273818.
- Michael set up self-directed IRA at Pensco to invest in distressed properties and flip houses. Pensco signed all documents on behalf of IRA and property titled "Pensco Trust Company FBO Michael Cherwanka IRA."
- Michael selected properties, managed contractors, decided when to sell, etc. However, he was not compensated.
- After 2008 financial collapse, Michael filed bankruptcy. Claimed IRA was exempt under Georgia law.
- Creditor objected to exemption on basis that Michael's activities on behalf of IRA was prohibited transaction.

- IRC prohibits sales, leases, loans, and other transactions between IRA owner and IRA as well as transactions in which owner derives personal benefit.
- Under Code Sec. 408(e)(2), if IRA engages in prohibited transaction, it ceases to be an IRA and becomes taxable. Once it loses IRA status, exemption from creditor claims no longer applies.
- Court ruled Michael's activities did not rise to level of prohibited transaction:
  - Federal law permits individuals to invest IRA assets in broad range of investments, including real estate and private companies.
  - Permitted range of investment alternatives implies that IRA owner will make investment decisions.
  - Michael's activities were consistent with settlor functions inherent in owner management of IRAs.
  - Court found ownership of one property 55% by Michael and 45% by Pensco IRA did cause transaction to be prohibited.

IRA Withdrawal used to Buy Real Estate was Taxable Distribution

- Dabney, TC Memo 2014-108.
- Guy Dabney had Charles Schwab IRA. Guy located undeveloped real estate he wanted to buy in IRA for $114,000. Schwab advised it didn't allow alternative IRA investments.
- Guy initiated withdrawal and Schwab wired to closing agent. Guy directed title be placed in "Guy Dabney Charles Schwab & Co. Custodial IRA", but closing agent titled in Guy's name instead.
- Guy sold property 2 years later and deposited proceeds back into Schwab IRA as "rollover contribution."
- Guy received 1099-R but reported as rollover. IRS assessed tax on audit.
- Tax Court sided with IRS and found IRA didn't buy property since, even if it had been titled correctly, Schwab's policies precluded IRA real estate investments and Schwab didn't knowingly accept title.

Waiver of 60-Day Rollover Requirement

- Rollovers into IRAs must occur within 60 days of distribution date to be eligible for tax deferral.
- Under Section 408(d)(3)(I) (added by EGTRRA in 2001), IRS may waive 60-day requirement if failure to do so would be against equity and good conscience.
  - Code specifically lists casualty, disaster, and events beyond reasonable control of taxpayer
- Under Rev. Proc. 2003-16, IRS will grant automatic waiver when 60-day period is not met solely due to bank error, funds are deposited into IRA within 1 year, and taxpayer followed bank procedures. IRS will waive other violations based on facts and circumstances, such as death, disability, illness, incarceration, postal error, or bank error.
  - PLR request required when waiver not automatic.

- Alexander, TC Summary Opinion 2014-18: Tom needed $36,000 to stop foreclosure proceeding. Charles Schwab recommended he draw it from his SEP IRA, borrow same amount from Schwab, and redeposit within 60 days. Schwab said loan would take 45 days. It took 61 days for Schwab to process loan and deliver check, and 5 more days until Tom could redeposit in IRA. Tax Court upheld assessment of tax and 10% penalty, since this was not error by financial institution relating to the rollover. Court noted Tom could request waiver from IRS under Rev. Proc. 2003-16.

- 2014 Private Letter Rulings under Rev. Proc. 2003-16:
  - At least 150 PLRs in 2014 considering waiver of 60-day requirement.
  - 16 unfavorable to taxpayer – due to taxpayer ignorance or fault.
  - More than 60% of favorable rulings due to financial institution error.
  - About 20% due to health condition that kept taxpayer from completing within 60 days.
  - About 10% due to plan distribution errors.
  - 3 due to bad advice from tax advisor.
  - Rest due to causes not within taxpayer's control (out of country entire time, postal service error, spouse abuse, misrepresentation, etc.)

IRS Allows Taxpayer to Undo Botched Roth IRA Conversion

- Taxpayers may convert regular IRAs to Roth IRAs without regard to income or filing status (income limits applied before 2010).
  - Conversions subject to income tax but not 10% penalty tax.
  - Conversions can be done by 60 day rollover or direct transfer.
  - Conversions can be recharacterized back to regular IRA up to Oct. 15 of year following year of conversion.
  - Reg. 301.9100-3 allows extension of recharacterization period when taxpayer acted reasonably and in good faith.
- In PLR 201404016, Ned did regular IRA to Roth IRA conversion in year income limit applied. Year-end projection showed Ned would have income less than threshold, but ended up being more. CPA failed to advise Ned and reported as taxable distribution on return. Ned signed return but didn't discover until 4 years later. IRS allowed Ned to recharacterize 4 years late.

Qualified Charitable Rollovers

- Since 2006, Code Sec. 408(d)(8) has allowed tax-free rollovers to charities.
  - Although a sunset provision, Congress has extended ever since.
  - Last extension expired 12/31/13.
  - To be considered again for 2014 in lame duck Congress.
  - $75M in total charitable rollovers to date – charities pushing hard.
- Requirements for tax-free rollover treatment:
  - Available only to IRA owners who have reached 70½ RBD.
  - Limit is $100,000 per individual IRA owner per year.
  - Counts toward RMD.
  - Only available from IRAs – not plan or "on-going" SEP or SIMPLE.
  - Must be paid to "qualified charitable institution".
    - Generally, just public charities.
    - Donor-advised funds, private foundations, split-interest trusts not included.

- Distribution must be made directly to charity.
- No double benefit allowed – can't also deduct charitable contribution on tax return.
- Entire distribution (if not paid by IRA) must have been allowable as charitable deduction – no quid pro quo benefits allowed.
  - Must get written acknowledgement that no goods or services received in return for contribution.
- Only taxable portion of distribution can be rolled over to charity. Distributions to charity deemed to come first from taxable portion.
- Tax-free charitable rollovers can be very beneficial to high income taxpayers due to deduction phase-out and charitable contribution cap.

ACA Kills Employer Pre-tax Payments for Individual Policies

- Before 2014, employers could contribute toward employees' individual health policies in several ways:
  - Rev. Rul. 61-146 Employer Payment Plan: employer could reimburse employee's premiums for individual coverage on pre-tax basis.
  - HRA rules: health reimbursement accounts could reimburse individual premiums tax-free.
  - Sec. 125 rules: flexible spending account in cafeteria plan could be applied to individual health ins premiums pre-tax.
  - Premiums deductible under Sec. 105 but excluded from employee gross income under 106.
- IRS Notice 2013-54 made clear that ACA no longer allows pre-tax payments of individual premiums.
  - Purpose is to discourage employers from helping with individual policies instead of offering group coverage.
  - Employer premium assistance can still be provided after-tax.

Discriminatory Group Health Plans Still Permitted for Now

- ACA added nondiscrimination requirements for insured group plans similar to those for self-fund medical plans under 105(h).
- In Notice 2011-1, IRS issued moratorium on enforcement of nondiscrimination requirements for insured plans pending issuance of regs. DOL and DHHS agreed to this delay.
- Regs not out yet and IRS has not announced when to expect them.
- IRS custom is to make regs effective for first plan year after publication. IRS indicated it will continue to follow practice of giving at least 6 months notice of change.
- In meantime, discriminatory plan designs still permitted in 2015.
- "Grandfathered plans" not subject to requirements even after rules issued, but few plans qualify anymore.

IRS Allows Two New Election Changes under Cafeteria Plans

- Cafeteria plans allow salary deferrals on pre-tax basis to purchase certain benefits.
  - Employee share of group insurance premiums
  - Uninsured deductible and co-insurance amounts
  - Dependent care assistance
- Under Reg. 1.125-4, salary deferral elections are irrevocable during plan year with certain exceptions, and "use it or lose it rule" applies.
  - Example: can revoke election and make new election mid-year upon change in family status.
- IRS Notice 2014-55 allows 2 new exceptions to irrevocable election requirement:
  - May revoke mid-year to cease coverage in group plan and enroll in ACA policy thru the exchange if necessary to avoid duplicate coverage.
  - May revoke mid-year if employee's hours drop below 30/wk and employee desires to enroll in another policy containing "minimum essential coverage."
  - Plan amendment required by last day of plan year new elections allowed.