STIFEL

Retirement Plans Quarterly

Third Quarter 2016

EXTENSION DEADLINE FOR EMPLOYER CONTRIBUTIONS

Employers may wait until the company's tax filing due date plus extensions to make company contributions to Qualified Retirement Plans, SEP and SIMPLE IRAs.

For fiscal year business owners, the standard tax filing date is the 15th day of the 3rd month after the end of the corporation's tax year. Extensions can stretch the employer funding and filing deadline an additional six months following the normal filing deadline.

For calendar year filers, March 15, 2016, was the 2015 tax filing deadline for Corporations and for S-Corps. The 2015 tax filing deadline for the self-employed was April 18, 2016 (Emancipation Day observed on Friday, April 15, 2016).

Extension deadlines

Business owners may request automatic extensions for tax filing, which includes plan contributions, by submitting appropriate forms before their normal filing date. If an extension was granted, **September 15, 2016**, is the final day a corporation may make company contributions. For the self-employed, **October 17, 2016** (October 15 falls on Saturday) is the final day employer contributions may be accepted and tax returns filed.

SIMPLE IRAS – OCTOBER 1 DEADLINE

The SIMPLE IRA is an employer-sponsored plan that allows eligible employees to make pre-tax salary deferrals into an IRA account and requires the employer to make annual contributions into the IRA account of each eligible employee. SIMPLE IRA plans must be maintained on a calendar year basis (IRC Sec. 408(p)(6)(C)).

New plans

October 1 is an important date for new SIMPLE plans, as there is a requirement that all new plans be established by October 1 of the year for which deferrals will be made. In addition, within a 60-day period preceding a plan year, the employer must allow eligible employees to make deferral elections (IRC Sec. 408(p)(5)(C)). **The 60-day election period for new plans must begin by October 1 to include 2016 deferrals.**

There is one exception to the October 1 establishment deadline. Newly established companies may open SIMPLE IRA plans as soon as administratively feasible to accept contributions immediately.

Existing plans

For existing plans, employers must furnish a 60-day election notice and salary deferral notice by November 1 each year. This notice allows newly eligible employees to make elections or existing employees to modify elections for the upcoming year.

October 1 is quickly approaching, and employers wishing to establish a SIMPLE plan for 2016 should do so quickly, as SIMPLE IRA plans established after this date are effective for 2017.

DEADLINE TO RECHARACTERIZE IS OCTOBER 17, 2016

After an IRA is converted to a Roth, there may be situations where the individual wants to reverse the conversion. One example would be when a tax-filer converts a Traditional IRA to a Roth and afterwards the market value of the converted securities decreases in value. In this case, an individual may recharacterize (reverse) the conversion back to a traditional IRA and do so without taxation or penalty.

Recharacterization example

To see how a reversal could benefit a taxpayer, let's assume he or she converted securities valued at $100,000. Since the conversion, the market value of the securities decreased to $75,000. The taxpayer will have to include $100,000 as ordinary income received (converted) on securities

now valued at $25,000 less. However, if that same taxpayer reverses the conversion, no tax will be due at that time. The IRA holder will have another opportunity to reconvert later at the lower value, which means less ordinary income tax to pay. For tax-filers that reverse a conversion back to a Traditional IRA, a reconversion may only occur the later of: January 1 of the tax year following the conversion or 30 days after the recharacterization (reversal).

Recharacterization between IRAs

In addition to reversing conversions, the IRS allows taxpayers that contribute to either a Traditional or Roth IRA the opportunity to recharacterize (move) that contribution (plus earnings or less the loss) to the other type of IRA. This may be a good strategy for those who discover their Traditional IRA contribution is not deductible and therefore elect to make it a Roth IRA contribution or that they exceeded the income limit for Roth contribution eligibility and therefore elect to make it a non-deductible Traditional IRA. Note that in order to move a Traditional IRA contribution to a Roth IRA, the taxpayer's Adjusted Gross Income (AGI) must be under the allowable limits for the year the contribution is intended ($131,000 for a single filer and $193,000 for married couples filing a joint return for 2015). However, there are no AGI limits for non-deductible contributions to Traditional IRAs, and therefore, taxpayers may recharacterize Roth contributions to a Traditional IRA if the IRA owner is under the age of 70½ for the intended contribution year.

Deadline

Note that to qualify for a recharacterization of contributions between IRAs, the reversal must be completed by October 15 of the year following the year the contribution was made and the individual must have filed his or her Federal income tax return by the normal filing deadline, plus extensions. However, since October 15 falls on a Saturday this year, the deadline to recharacterize 2015 conversions and contributions is October 17, 2016, which is quickly approaching.

Recharacterization steps:

1. Inform the custodian to complete a transfer of the original contribution/conversion amount from one IRA account to another. The transfer must include any net income (or loss) from the original date of the contribution, which the custodian will calculate.
2. File an amended tax return if the recharacterization is for a previous year's contribution/conversion.
3. File IRS Form 8606 to report a non-deductible contribution that was recharacterized from a Roth IRA to a Traditional IRA.

The ability to recharacterize/reverse ineligible IRA contributions or underperforming Roth IRA conversions provides flexibility to IRA holders. Remember, before a decision is made, it is always recommended that individuals seek the aid of a competent tax advisor or tax attorney to assist with tax advice and guidance.

FIX-IT GUIDES FOR 401(K) AND 403(B) PLANS, SEP, SARSEP, AND SIMPLE IRAS

Do you know that the IRS provides tips on how to find, fix, and avoid common mistakes in 401(k) and 403(b) plans, as well as SEP, SARSEP, and SIMPLE IRAs?

User-friendly guides available online

For a quick review to determine if you are meeting some of the basic requirements in operating your retirement plans, go to https://www.irs.gov/retirement-plans/plan-sponsor/fix-it-guides-common-problems-real-solutions and select which type of retirement plan you are maintaining. Once there, you will notice that the program lists in its heading, Mistake, Find the Mistake, Fix the Mistake, and most importantly, Avoid the Mistake. Also note that the program allows individuals the ability to navigate, select, and print only the mistakes that are of interest to them.

Fix-It Guide potential mistakes

The first topic, Mistake, is offered in an easily understood format and includes common mistakes, such as:

- **The plan failed the 401(k) ADP and ACP nondiscrimination tests.**
- **The plan was top-heavy and the required minimum contribution wasn't made to the plan.**
- **A Form 5500-series return hasn't been filed for this year.**
- **Your organization isn't eligible to sponsor a 403(b) plan.**
- **The organization didn't adopt a written 403(b) plan document intended to satisfy the law by December 31, 2009.**
- **All employees of the organization weren't given the opportunity to make a 403(b) salary deferral.**
- **Your SEP plan document wasn't updated for current law.**
- **Eligible employees were excluded from participating in the SEP.**
- **The organization has more than 25 eligible employees, which is the limit for SARSEP IRAs.**
- **Less than 50% of eligible employees made employee elective deferrals to their SARSEP.**
- **SIMPLE IRA plan notification requirements weren't followed.**
- **The business sponsors another qualified retirement plan in addition to a SIMPLE IRA.**
- **The organization didn't timely deposit elective deferrals.**
- **Employer contributions weren't made for terminated eligible employees.**

If none of these mistakes apply to you, it may indicate that your plan is in good shape. However, you should share this information with your CPA or other professional consultant to verify all is well.

Common mistakes

The IRS frequently finds common mistakes when doing retirement plan examinations, such as not covering the proper employees or not giving employees required information. Other common operating mistakes found include not depositing employee deferrals or employer contributions on a timely basis, not following the terms of the plan document, or not limiting employee deferrals and employer contributions to the maximum limits.

Mistakes don't go away by themselves

The IRS has correction programs that are structured to provide financial incentives for finding and correcting mistakes earlier rather than later. In fact, many mistakes can be corrected easily, without penalty and without notifying the IRS. The IRS system of retirement plan correction programs, the **Employee Plans Compliance Resolution System (EPCRS)**, helps business owners protect participant benefits and keep their plans within the law.

The three ways to correct mistakes under EPCRS are:

1. **Self-Correction Program (SCP)** — permits a plan sponsor to correct certain plan failures without contacting the IRS or paying any fee.
2. **Voluntary Correction Program (VCP)** — permits a plan sponsor to, any time before audit, pay a fee and receive IRS approval for correction of plan failures.
3. **Audit Closing Agreement Program (Audit CAP)** — permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit.

Note that the *Fix-It Guides* do not cover all plan requirements, so it should not be used as a complete plan review. It is, however, an easy way to start a plan check-up. To learn more about IRS correction programs, go to: https://www.irs.gov/retirement-plans/plan-sponsor/fix-it-guides-common-problems-real-solutions .

PROTECTING RETIREMENT ACCOUNTS FROM CREDITORS

Retirement accounts remain among many people's most valuable asset for saving for their future. The protection provided to these accounts will depend on the type of account, the state of residence, and whether the assets are inherited.

Certain employer-sponsored plans, such as 401(k)s, are covered by the Employee Retirement Income Security Act (ERISA). In bankruptcy, ERISA plans are completely protected from creditors. However, they are subject to IRS levies and possible reassignments due to divorce. Plans not covered by ERISA, such as an IRA, have only limited federal protection. Under the Bankruptcy Abuse Prevention and Consumer Protection Act, federal law protects up to $1 million in an IRA that's been contributed to directly, and protects the entire account balance if the money was rolled over into an IRA from an employer's plan. In addition, Simplified Employee Pension (SEP) and Savings Incentive Match Plan for Employee (SIMPLE) IRAs are totally protected.

Anything short of bankruptcy, individual state law will determine whether IRAs (including Roth, SEP, and SIMPLE IRAs) are shielded from creditors' claims. Some states exempt 100% of the assets, while other states vary widely on the amount that is exempt. Some states exempt only what is "reasonably necessary" to support the owner and his or her dependents.

In the case when an individual has terminated employment, rolling over assets from a qualified plan into an IRA has estate planning benefits. However, if the individual is not filing for bankruptcy protection and lives or is moving to a state where IRAs are not protected from creditors, the individual may be better off leaving the assets in the company plan. So, an individual should contact a lawyer familiar with the rules of the state where he or she plans to live. Note that if a participant has at least $5,000 in a company plan, the company must allow this individual to leave the money in the plan until he or she reaches age 70½. Also, the company is not required to allow partial withdrawals or to make loans available to terminated plan participants.

For individuals who might be returning to work after a period of unemployment and who previously rolled their retirement plan assets into an IRA after leaving a former employer, their new employer's plan may allow rollovers of assets held in IRAs directly into the plan. A rollover may be a wise choice to regain creditor protection. This strategy may also be attractive to people who are starting their own businesses and setting up a retirement plan.

Inherited IRAs not protected

Unlike IRAs for owners, it's important to note that an IRA inherited by a beneficiary after the death of the owner is not subject to the same federal protection. In a 2014 U.S. Supreme Court (Case No. 13-299), a married couple who filed a Chapter 7 bankruptcy petition identified an inherited IRA as exempt from the bankruptcy estate. They argued that an inherited IRA is still technically a retirement fund because that's the way it was originally set up.

Relying on the "plain language of §522(b)(3)(C)," the court concluded that an inherited IRA "does not contain anyone's retirement funds," because unlike a traditional IRA, the funds are not "segregated to meet the needs of, nor distributed on the occasion of, any person's retirement."

Note that this limited information is just a highlight of a long court case and to review a complete transcript of the case, see http://www.supremecourt.gov/opinions/13pdf/13-299_6k4c.pdf.

Final notes:

Even though the recent Act brings some clarity to the treatment of IRAs in bankruptcy, it is an over-statement to say it protects IRAs from all claims and attachments by creditors. Remember, the IRS still has the right to levy IRAs. And, some states allow creditors to attach IRAs in domestic relations court cases regarding unpaid child support, or in cases of civic judgment. If an individual owns traditional and/or Roth IRA assets and is planning on filing for bankruptcy,

it's imperative that he or she check with a tax advisor for details and ask about segregating contributory amounts from qualified plan rollover amounts.

This information is not intended to give tax or legal advice and is for educational purposes only. It is recommended that individuals seek the aid of a competent tax advisor or tax attorney to assist with tax advice and bankruptcy guidance.

DISASTER RELIEF FOR RETIREMENT PLANS AND IRAS

When a natural disaster occurs, probably the last thing on anyone's mind is retirement plan or IRA deadlines. Fortunately, the IRS understands this and willingly extends certain deadlines for affected taxpayers who live in or have a business in a disaster affected area.

Disasters, which must be formally declared by the President, include severe storms, wildfires, floods, and earthquakes. If a disaster is declared, the IRS will provide the following in an official news release:

- The type of relief
- Taxpayers eligible for relief
- The duration of the relief period

While the IRS maintains a comprehensive list of deadlines that may be postponed, each disaster is viewed differently and not all deadlines on the list will automatically be postponed. However, in general, if the IRS press release does not specify which deadlines are extended, all the deadlines will be postponed. Some of the more important deadlines that can be postponed include:

- IRA distributions
- IRA contributions
- Satisfying IRC sections 401(a) and 403(b)
- Rollover distributions
- IRA trustees or issuers providing information concerning IRAs to IRA owners
- Form 5500 filing
- Self-correcting operational failures

For a comprehensive list of deadlines, see IRS Rev Proc 2007-56:

https://www.irs.gov/irb/2007-34_IRB/ar13.html#d0e1696

To see a list of recently declared disaster areas, please visit the following web site:

https://www.irs.gov/uac/tax-relief-in-disaster-situations

IRS CORRECTION METHODS FOR MISSED PLAN DOCUMENT DEADLINES

Most ERISA defined contribution plans (401(k), 403(b), profit sharing, money purchase) were required to have their plan documents "restated" (updated) for the Pension Protection Act (PPA) by April 30, 2016. If the document restatement was not completed by April 30, the plan is subject to financial penalties and may be considered disqualified. However, the IRS anticipated that many plan documents would not be restated by the deadline and, therefore, is offering two correction methods, one of them new, for plan sponsors to update their plan documents.

The first correction method is the Voluntary Correction Program (VCP). The VCP enables a plan sponsor, at any time prior to an IRS audit, to voluntarily disclose a qualification failure, including a missed plan document restatement, that it has discovered in its own plan. The VCP method requires the employer to pay a fee that is generally less than if the IRS were to discover the failure in an audit. If approved, the IRS will restore tax-favored status to the plan.

The second correction method is a new option that allows the financial institution or service provider that supplied the plan document to request a correction on the plan sponsor's behalf. Realizing that some employers may never act on their own, the IRS is enlisting plan document providers to assist by submitting proposals for "umbrella closing agreements" that cover individual employers that have not updated their plans by the deadline. The umbrella closing agreements must meet the following requirements:

- A minimum of 20 plans covered by the agreement
- $5,000 fee for the first 20 plans plus $250 for each additional plan (maximum fee of $50,000)
- Plans included must have provided a consent to participate in the correction program
- Plans included must have previously adopted an amendment for the Economic Growth Tax Relief Reconciliation Act of 2001 (EGTRRA)
- An execution of the PPA restatement using the service provider's pre-approved document

Affected plan sponsors should inquire with their respective plan document provider to see if they are planning to participate in the umbrella closing agreement. If not, the plan sponsor should move forward with the Voluntary Correction Program (VCP) method, which is the only way for the plan to maintain its qualified status and avoid significant financial penalties.

The information contained in this newsletter has been carefully compiled from sources believed to be reliable, but the accuracy of the information is not guaranteed. This newsletter is distributed with the understanding that the publisher is not engaging in any legal or accounting type of work such as practicing law or CPA services.

STIFEL

Stifel, Nicolaus & Company, Incorporated | Member SIPC & NYSE | www.stifel.com
One Financial Plaza | 501 North Broadway | St. Louis, Missouri 63102