ASPPA®
WORKING FOR AMERICA'S RETIREMENT

31 Flavors of Rollovers

William C. Grossman, ERPA, QPA, GFS, APA, MBA
McKay Hochman Consulting, Provided by DST

ASPPA®
WORKING FOR AMERICA'S RETIREMENT

Agenda

- One IRA-to-IRA Rollover Per One-Year Period; Announ. 2014-15/32
- Bankruptcy and Creditor Protection
- Various Rollover Scenarios, Document Issues
- Facilitating Rollovers into QPs; RR 2014-9
- Impact of After-tax in a QP vs. in an IRA
- Eligible Rollover Distributions, the 402(f) Notice and After-tax Partial Rollover Distribution
- After-tax and Rollovers: Notice 2014-54
- RMD and Beneficiary Rollover Issues
- Roth Conversions, Notices 2010-84 and 2013-74
- Qualified Rollover Contributions: Notice 2008-30
- Differences Between Roth IRA and Designated Roth
- Terminating Participant Issue: Leave in 401(k) vs. Roll to an IRA
- Form 1099-R Reporting of 401(k) Roth Rollovers and Conversions
- Rollover Charts, An Important Reference Tool

2

The One IRA-to-IRA Rollover Per One-Year Period Rule

3

One IRA to IRA Rollover Every 12 Months

- "Generally, if you make a tax-free rollover of any part of a distribution from a traditional IRA, you cannot, within a 1-year period, make a tax-free rollover of any later distribution from that same IRA. You also cannot make a tax-free rollover of any amount distributed, within the same 1-year period, from the IRA into which you made the tax-free rollover.
- The 1-year period begins on the date you receive the IRA distribution, not on the date you roll it over into an IRA."

4

ASPPA
WORKING FOR AMERICA'S RETIREMENT

One IRA to IRA Rollover Every 12 Months Publication 590, Page 25, Example

- ***"Example. You have two traditional IRAs, IRA-1 and*** **IRA-2**.
  - You make a tax-free rollover of a distribution from IRA-1 into a new traditional IRA (IRA-3).
  - You cannot, within 1 year of the distribution from IRA-1, make a tax-free rollover of any distribution from either IRA-1 or IRA-3 into another traditional IRA.
- The rollover from IRA-1 into IRA-3 does not prevent you from making a tax-free rollover from IRA-2 into any other traditional IRA.
  - This is because you have not, within the last year, rolled over, tax free, any distribution from IRA-2 or made a tax-free rollover into IRA-2."
- Transfer of Trusteeship does not require a wait

5

ASPPA
WORKING FOR AMERICA'S RETIREMENT

One IRA to IRA Rollover Every 12 Months Tax Court Case Challenges Pub. 590

- Bobrow v. Commissioner of IRS, T.C. Memo. 2014-21, United States Tax Court, Docket 7022-11, Filed January 28, 2014
- The tax court ruled that the one IRA to IRA rollover per year rule applies to all IRAs an individual owns in the aggregate, not to each IRA separately
- Tax Court ruling based on wording of Code Section 408(d)(3)(B)
  - Section 408(d)(3)(b) does not specify that there is one rollover per IRA but rather it indicates that an individual who receives money from an IRA and rolls it over to another IRA within 60 days may only do this once during any 1-year period ending on the day of receipt of the distribution from the IRA

6

One IRA to IRA Rollover Every 12 Months
Tax Court Case Challenges Pub. 590

- The petitioners asserted that 408(d)(3)(B) applied to each IRA
  - However, there was no case law
  - Cited were Technical Advice Memorandum 9010007 (Dec. 14, 1989), and
  - Zaklama v. Commissioner, T.C. Memo 2012-346
  - The Tax Court stated that neither bears any relevance to the more than one tax-free rollover per year rule
  - Strangely, there was no mention of the Publication 590 explanation of 408(d)(3)(B) in the tax court memorandum

Two Methods of Moving IRA Funds

IRA to IRA Rollover	Transfer of Trusteeship
IRA Owner Withdraws Funds	Institution "Collects" IRA Funds on behalf of individual's IRA
Check Payable to : INDIVIDUAL	Check Payable to: "Institution as Successor Trustee/Custodian of IRA of John Doe"
IRA Owner use of funds for up to 60 days	IRA Owner has no use of funds
Rollover must be made within 60 days of RECEIPT of funds	Rollover funds go directly to IRA at new Trustee/Custodian
Subject to 10% withholding rules	Not subject to 10% withholding rules
IRS Reportable on Form 1040 series ➢Distribution on Form 1099-R ➢Rollover contribution on Form 5498	No reporting to IRS
RMD may not be rolled over	RMD may be transferred
12-month wait rule	Transfer of Trusteeship does not require a 12-month wait

Qualified Plan to IRA Rollover vs. One IRA-to-IRA Rollover a Year

- **There is a 12-month wait after IRA funds have been moved by a participant rollover from one IRA to another IRA**
  - **The 12-month wait applies to the particular funds rolled over and the particular IRA ….**or so we thought until:
- **IRS Announcement 2014-15, March 20, 2014**
  - **IRS will follow Sec. 408(d)(3)(B) and only permit 1 IRA-to-IRA rollover per 12 months based on aggregate of individual's IRAs**
  - **IRS will revise Pub. 590 to reflect this**
  - **IRS will not enforce this for rollovers before Jan. 1, 2015**
  - **IRS will be issuing proposed regulations on IRA Rollovers**
- **IRS Announcement 2014-32, Nov. 10, 2014**
  - **Clarified that the change would be effective for distributions made after December 31, 2014**
    - **Distributions made in 2014, rolled over in 2015 will not trigger the new rule.**

9

Participant Rollovers IRA-to-IRA Waiting Period Example 1

Date	Transaction	One-year wait Invoked?	Comments
Jan. 12, 2015	Joe withdraws all funds from his IRA 1	No	This is the first withdrawal made from an IRA by Joe
Feb. 28, 2015	Joe deposits the funds withdrawn from IRA 1 into IRA 2	Yes	IRA-to-IRA rollover made within 60 days. Funds must wait until Jan. 13, 2016 to be withdrawn and rolled to another IRA*
Feb. 15, 2016	Joe withdraws all funds from his IRA 3	No	Joe had to wait 12 months from receiving distribution from IRA 1 to roll to IRA 2.

* The 12-month wait may be circumvented by a trustee-to-trustee transfer from one IRA to another, as there is no 12 month wait to make a transfer

10

Participant Rollovers
IRA-to-IRA Waiting Period Example 2

Date	Transaction	One-year wait Invoked?	Comments
May 15, 2014	Participant Rollover from 401(k) to IRA	No	No one-year wait when moving from QP to IRA
June 23, 2014	Individual withdraws all IRA funds	No	
Aug. 10, 2014	Individual rolls over funds withdrawn from an IRA on June 23 to a new IRA	Yes	IRA-to-IRA rollover made within 60 days. Funds must wait until June 24, 2015 to be withdrawn and rolled to another IRA*

* The 12-month wait may be circumvented by a trustee-to-trustee transfer from one IRA to another, as there is no 12 month wait to make a transfer

11

Participant Rollovers
IRA-to-IRA Waiting Period Example 3

Date	Transaction	One-year wait Invoked?	Comments
May 15, 2014	Participant Rollover from 401(k) to IRA	No	No one-year wait when moving from QP to IRA
June 23, 2014	Individual withdraws all IRA funds	No	
Aug. 10, 2014	Individual rolls over funds withdrawn from an IRA on June 23 to a new employer's 401(k)	No	Since there has not been an IRA-to-IRA rollover, the one-year wait has not been invoked.

The participant is able to move money from a IRA 3 to IRA 4 which would then invoke the 12-month wait. Again, the wait may be circumvented by a trustee-to-trustee transfer from one IRA to another, as there is no 12 month wait to make a transfer.

12

Once per 12 months IRA-to-IRA Rollover Epilogue

- **In the Federal Register on July 11, 2014, the IRS withdrew part of a portion of a proposed regulation published in the Federal Register on July 14, 1981.**
- **The portion withdrawn contained language similar to the Publication 590 about one IRA-to-IRA rollover per IRA per 12 month period.**
- **As mentioned earlier,**
  - **IRS intends to issue new proposed regulations along the lines of Code Section 408(d)(3)(B).**
  - **The IRS will not enforce the interpretation of the *Bobrow* case to any rollover occurring prior to January 1, 2015**
- **Announcement 2014-32 clarified that implementation starts with distributions made after December 31, 2014**

13

Participant Bankruptcy and Participant Creditor Protection

Impact on Decision to Roll to an IRA or Leave Funds in a Qualified Plans

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Bankruptcy – Supreme Court Case

- ***Patterson v. Shumate*, [112 S.Ct. 2242 1992]**
  - **Supreme Court held that the anti-assignment provision of ERISA section 206(d) is an enforceable nonbankruptcy law which results in the plan benefit being excluded from the bankruptcy estate of the plan participant.**
  - **This landmark case ended the inconsistent application of the bankruptcy law to ERISA plans.**

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

BAPCPA provides that:

- **All ERISA plans are exempt from the bankruptcy estate**
  - **Participant loans must be repaid**
- **IRAs containing annual contributions are exempt from Bankruptcy Estate up to $1,000,000. COLA adjusted: $1,242,475 as of 2014**
- **In addition, rollover IRAs where the funds are from a qualified plan, 403(b) or a governmental 457(b) plans are entirely exempt.**

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

- **Example**
  - **Traditional IRA has $110,000**
  - **The IRA owner has $2,300,000 in another IRA that was rolled over from a 401(k) plan.**

  - **The $110,000 would be protected from bankruptcy under the BAPCPA $1 million dollar exemption**
  - **The $2,300,000 also protected as it was from a 401(k) plan**

17

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Supreme Court Rules Inherited IRAs Are Included as Part of the Bankruptcy Estate

- The Supreme Court unanimously ruled, 9-0, in *Clark et ux. v. Rameker, Trustee, et al.,* No. 13-299, that inherited IRAs are part of the federal bankruptcy estate.
  – Court ruled that inherited IRAs do not qualify as "retirement funds"

18

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Supreme Court Rules Inherited IRAs Are Included as Part of the Bankruptcy Estate

- Supreme Court ruled that three characteristics of inherited IRAs show that they are not retirement funds. Specifically, individuals with inherited IRAs:
  1. May never contribute additional money
  2. Are required to receive distributions from these accounts regardless of their proximity to retirement
  3. May withdraw the entire account balance at any time and use the proceeds for any purpose, without being subject to the 10% early withdrawal penalty

19

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Supreme Court Rules Inherited IRAs Are Part of the Bankruptcy Estate

- Inherited IRAs may be established by non-spouse beneficiaries; or by a spouse beneficiary
- Spouse beneficiaries also have the right to roll their deceased spouse's funds directly to their own IRA, which would be exempt from bankruptcy, but which would be subject to the 10% penalty on distributions before age 59½
- *A beneficiary in qualified plan needs to consider the bankruptcy protection when deciding to either leave the money in the qualified plan or roll it to an IRA*

20

Creditor Protection (Individual Not in Bankruptcy)

- ERISA Title I plans are protected from creditors under Code Section 401(a)(13)
  - Note: Non-Title I Plans may not be protected for reasons other than bankruptcy
  - Non-Title I plans may be subject to creditors, state by state rule
- Sole proprietor plans with no employees other than owner and spouse, and partnership plans with no employees other than the partners and spouses are not Title 1 plans. Thus do not have creditor protection

21

Creditor Protection Rollover to IRA vs. Title 1 ERISA Plans

- **IRAs have *no* creditor protection under Federal law**
  - **State by state issue of whether a state provides creditor protection for IRA and for plans not subject to Title I**
- *A participant in a Title I plan needs to consider the creditor protection when deciding to either leave the money in the Title I plan or roll it to an IRA*

22

Other Rollover Scenarios,

Document Issues

Participant Rollover
60-Day Rule

- 60-days counted from receipt of funds, not the date on the check
  - Calendar days, not business days
  - If 60th day falls on weekend, complete rollover by weekday preceding that weekend
- Participant has 60 days to rollover the pre-tax portion of the distribution to a traditional IRA

  Or
- To an eligible retirement plan, provided the plan has language to accept rollovers.

24

ASPPA WORKING FOR AMERICA'S RETIREMENT

Participant Rollover 60-day Rule – Exceptions

- The IRS may waive the 60-day requirement if the failure was due to an event beyond reasonable control of the individual, i.e. a casualty, disaster, etc.
  - PLR Filing request Certain waivers of 60-day rollover period; Rev. Proc. 2014-8
  - PLR Requests
    - Rollover less than $50,000 = $500 fee
    - Rollover >$50,000 to less than $100,000 = $1,500 fee
    - Rollover $100,000 or more = $3,000
- Frozen deposit due to funds being in an institution in bankruptcy or insolvency
  - In such cases, 60 days extended until 10 days after funds available again

ASPPA WORKING FOR AMERICA'S RETIREMENT

Rolling Traditional IRA into 401(k)

- Once the traditional IRA is rolled into the QP, it is treated as QP rollover sourced funds. The IRA loses all IRA characteristics and is considered just a rollover source.
- A traditional IRA can not invest in life insurance or have a participant loan
- A traditional IRA rolled into a QP is now just a rollover source, subject to QP rules.
  - Provided the plan has the provisions, a participant loan can be obtained on the rollover amount as well as a purchase of life insurance; provided the QP accepts rollovers from IRAs

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Direct Rollover of Pre-tax Sources to a Roth IRA

- Participant must pay tax on distribution amount as if they had not rolled over into a Roth IRA
  - After-tax contributions not taxed again.
  - 10% tax on early distributions does not apply
- Amounts rolled to Roth IRA subject to same rules for converting traditional IRA to Roth IRA

27

ASPPA
WORKING FOR AMERICA'S RETIREMENT

IRA to QP Rollover Caveats

- Only pre-tax IRA can be rolled to a qualified plan
  - Non-deductible amounts in a traditional IRA may not be rolled into a qualified plan
- Roth 401(k) can be rolled to a Roth IRA
  - But: A Roth 401(k) rolled into a Roth IRA cannot be rolled back to a Roth 401(k)
  - Why? (See next slide)

28

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Roth IRA Cannot Be Rolled to a 401(k) Roth

- **Why?**
  - **Law prohibits, there is no conduit Roth IRA**
- **Measuring five-year period differences**
  - **Roth IRA v. Roth 401(k) different clocks**
    - **Roth IRA, from first Roth IRA**
    - **Roth 401(k),**
- **Ordering Rules for Roth IRA v. Pro-rata rules for Roth 401(k)**

29

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Rollover of Property – Overview

- In-kind distribution from plan provision would need to be available
- Plan accepting rollover must permit in-kind rollover
- Can roll a portion only
- Can not keep property and rollover cash equivalent
- Can sell and roll proceeds including gains
- IRS Publication 575 for more details

30

Rollover Due to Plan Termination Auto-cashout Over $5,000

- Generally, IRS Rev. Rul. 89-87 requires distribution of all plan assets within one year of the plan termination date.
- If the participant does not respond, auto-cashout direct rollover to IRAs may be made without the participant's consent for vested balance over $5,000 [per Treas. Reg. 1.411(a)-11(e)] provided that:
  - **The plan does not offer an annuity form of payout option;**
  - **The plan is not a money purchase or target benefit plan;**
  - **There is no other plan of the employer (with the exception of an ESOP); and there is no other plan among any employer of a controlled group to which the employer belongs (with the exception of an ESOP);**
  - **Every effort has been made to locate the participant; including the DOL missing participant rules**

31

Rollovers of In-service Distributions

- For plans that permit in-service distributions
- In-service distributions may be directly rolled to an IRA
  - Participants (usually HCEs) use this option to move funds to a self-directed IRA and direct investments themselves, vs. having to add self-directed to the qualified plan

32

In-service Distribution of Rollovers?

- What are the plan's provisions for in-service distribution of rollovers?
  - Automatically default to permitting distribution of a rollover at any time as an in-service distribution?
  - Do your in-service provisions override the rollover at any time provision?
  - Protected benefit issue
- Careful when mapping a take-over plan or a restatement

33

Rollover of Participant Loan

- Participant loan may not be rolled to an IRA
- Participant loan may be rolled to another qualified plan, provided:
  - Recipient plan permits rollovers and offers loans and permits the rollover of loans

34

Rollover by Participant or Employee

- Plan provisions can permit rollover by participant or by employee
  - If by participant and participant is defined as having met the eligibility requirements, then …
  - If by employee, then employee may make rollover upon hire and not have to wait to satisfy eligibility and enter the plan to maker a rollover
  - Check your plan document

Rev. Rul. 2012-4 DC Direct Rollover to DB

- RR 2012-4 permits a direct rollover
  - From: employer's defined contribution plan
  - To: same employer's defined benefit plan
  - Provided: direct rollover funds are converted into an actuarially equivalent immediate annuity for that participant
  - Effective January 1, 2013
- PBGC Final Regs.; Treatment of DC Plan Rollover to DB
  - Terminating underfunded DB plan: DC rolled-in is not subject to the maximum guarantee.

Revenue Ruling 2014-9

Facilitating Rollovers into Qualified Plans

RR 2014-9 Scenario 1

- In 2014, the plan administrator of a qualified plan receives a 2014 direct rollover check from a prior employer's plan. The check may be presumed to come from a plan that is qualified IF:
  - **The Form 5500, for the distributing plan, did *not* enter Code 3C on line 8a (as that would indicate non-qualified plan status). Form 5500-SF look at line 9a for the 3C.**
    - **Plan administrator is to go to DOL Form 5500 web site to verify this, i.e. www.efast.dol.gov , search for plan's most recently filed form**
  - **PROVIDED, there is no evidence to the contrary.**
  - **If RMD is due for the year, distributing plan is responsible to have made the RMD before the direct rollover.**

38

RR 2014-9
Scenario 2

- Code Section 402(c) → traditional IRA (pre-tax amounts only) rollovers may be accepted by a qualified plan

- Exceptions to this rule:
  - Inherited IRA
  - SIMPLE IRA in which the participant has not satisfied the two years of participation rule

RR 2014-9
Scenario 2

- Evaluating the reasonableness of a check
  - Qualified plan administrator receiving a check payable to: "Qualified plan FBO the participant" from a traditional (not-inherited) IRA may safely assume that the funds are from a traditional, non-inherited IRA, **if:**
    - **Check stub indicates distributing account is titled "IRA of Name of the Distributee."**
    - **The distributee certifies:**
      - **The distribution is from a traditional IRA and includes no after-tax dollars, and**
      - **He or she will not attain age 70½ by the end of year of the transfer**
    - **Provided, there is no evidence to the contrary**

ASPPA
WORKING FOR AMERICA'S RETIREMENT

RR 2014-9 For Scenario 1 & 2

- If the distributee reached age 70½ or older by the end of the year in which the check was issued:
  - the plan administrator could not reasonably conclude that the rollover was valid, without additional information
- It is OK if there is no check stub, provided check itself identifies the source of the funds
- Rollover by wire transfer or other electronic means ok, provided sufficient information is given by senders to validate source of funds.

ASPPA
WORKING FOR AMERICA'S RETIREMENT

RR 2014-9 Rollover Later Found Ineligible

- If plan administrator of the receiving plan later determines that the contribution was an invalid rollover*:
  - Then, the plan administrator must distribute the invalid rollover, plus any earnings, to the employee within a reasonable time after such determination.
  - 1.401(a)(31)-1, Q&A 14

* An invalid rollover contribution is an amount accepted as a rollover that does not satisfy Code's rollover requirements.

After-tax in a Qualified Plan Versus After-tax in an IRA

The Impact on the Participant

QUALIFIED PLAN AFTER-TAX

- *Post-1986* after-tax contributions to a qualified plan (QP) are to be distributed pro-rata with pre-tax amounts.
  - E.G. as part of periodic payments such as required minimum distributions or non-periodic payments.
- Pre-1987 after-tax contributions may be distributed upon request without being pro-rata
- Plan administrator's responsibility to track and report correctly

44

Qualified Plan After-tax Example

- **Employee who worked for three unrelated employers since 1990.**

	Employer A	Employer B	Employer C	Total
Pre-tax	$6,000	$10,000	$18,000	$34,000
After-tax	$2,000	$4,000	$6,000	$12,000
Total	$8,000	$14,000	$24,000	$46,000

- **Distribution of $5,000 from Employer C's QP this year.**
- **The after-tax portion of the distribution is calculated as follows:**
- **Basis at ER C over Balance at ER C (as of last Dec. 31)**
- **$6,000/$24,000 times $5,000 = $1,250**
- **Gross distribution $5,000, Taxable Amount $3,750.**
- **Gross distribution, Box 1 = $5,000**
- **Taxable Amount, Box 2a = $3,750.**
- **ER C reduces Basis $6,000 - $1,250. = $4,750**

45

IRA After-tax (Basis) Tracking Issue

- **IRA holder responsible for tracking IRA basis**
- **Aggregate all IRAs (other than Roth) for accounting of after-tax IRA contributions**
  - **Calculation of the pro-rata after-tax amount of IRA distributions requires adding together all after-tax amounts in all IRAs (other than Roth).**
- **Why would a TPA/record keeper wish to know about this?**
  - **When advising clients about directly rolling after-tax funds to an IRA, it is important to understand the impact of after-tax dollars on IRA recordkeeping**

46

IRA After-tax Example

- IRA Owner has three tradition-al IRAs with after-tax.

	Institution A	Institution B	Institution C	Total
Pre-tax	$6,000	$10,000	$18,000	$34,000
After-tax	$2,000	$4,000	$6,000	$12,000
Total	$8,000	$14,000	$24,000	$46,000

- Distribution of $5,000 from IRA at Institution C this year.
- The after-tax portion of the distribution is calculated as follows:
- Total Basis over Total Balance (as of Dec. 31)
- $12,000/$46,000 times $5,000 = $1,304.35
- Gross distribution $5,000, Taxable Amount $3,695.65.
- Gross distribution, Box 1 and 2a = $5,000,
- Institution Checks: Taxable Amount Undeterminable, Box 2b

47

IRA After-tax Tracking Issue

- Form 8606 (Filed with Form 1040)
  - After-tax basis in traditional, Roth, SEP and SIMPLE IRAs
    - Distributions and contributions for the year
  - Roth IRA distributions
  - Tracks conversions; until the IRA holder closes all of his/her IRAs

48

IRA After-tax Tracking Issue

- **Once after-tax dollars are in any of the IRA owners traditional IRAs, all of the traditional IRAs are affected and all distributions from then until the IRAs are all closed must be done on a pro-rata basis of pre-tax and after-tax.**
  - **Tracked and calculated on Form 8606**
- **Lack of accurate recordkeeping by an IRA owner can (and sometimes does) result in the payment of income taxes on what is actually an after-tax IRA amount being distributed from the IRA.**
  - It is suggested as a best practice for TPAs/record keepers not to roll after-tax amounts into a participant's traditional IRA without the participant's express authorization.

49

Eligible Rollover Distributions

The 402(f) Notice

Partial Rollovers When There Is an After-tax Contribution

Eligible Rollover Distribution Rules Avoiding the 20% Withholding

- **Eligible Rollover Distributions Paid to a Participant are subject to 20% mandatory withholding**
- **Is there a way around the 20% withholding?**
  - Yes
    - Direct rollover to IRA
    - Then, a distribution may be made from the IRA because there is no mandatory 20% withholding on IRAs

402(f) Notice Original Purpose

- **Participant's right to direct rollover**
  - **To avoid 20% mandatory withholding**
- **Mandatory 20% withholding tax**
  - **if an eligible rollover distribution is not directly rolled to a traditional IRA or another eligible retirement plan**
- **Example**
  - **$100,000 eligible rollover distribution amount**
  - **Participant requests payment in cash**
  - **$20,000 mandatory withholding**
  - **$80,000 paid to participant, age 30**
  - **Within 60 days of receipt, participant rolls over $80,000 to IRA**

402(f) Notice: IRS Model Forms

- **2009 IRS model 402(f) notices** to be used (or a modification of the model)
  - **Q & A format**
  - ***Lost emphasis on 20% withholding***

- ***Partial Rollover with After-tax issue***

- ***2014 IRS model 402(f) notices, Notice 2014-74 addressed partial rollover with after-tax, to be discussed shortly***

53

Participants with both After-tax and Pre-tax Amounts

- **<u>Partial or installment distributions</u> from accounts of individuals in qualified plans that contain after-tax amounts (not Roth):**
  - **Require a pro-rata distribution of after-tax and pre-tax amounts**
  - **Except for after-tax contributed prior to 1987.**

54

Partial Rollovers Pre-tax First, Separating Pre-tax?

- A retiring 401(k) plan participant has a $1 million account balance, $920,000 pre-tax and $80,000 in post-1986, after-tax contributions.
- He wishes to directly roll the $920,000 to a traditional IRA and withdraw the $80,000 after-tax.

55

After-tax and Rollovers Notice 2014-54

ASPPA
WORKING FOR AMERICA'S RETIREMENT

After-tax and Rollovers Notice 2014-54

- Multiple destination rollovers, e.g. rollovers to 401(k), IRA and 60-day participant rollover made at the same time when participant has pre-tax and after-tax amounts involved.

- 402(f) model notices issued under Notice 2009-68 did not provide for this.

57

ASPPA
WORKING FOR AMERICA'S RETIREMENT

After-tax and Rollovers Notice 2014-54

- New Rules Introduced with examples

  - To determine the after-tax portion of distribution, treat all disbursements scheduled at the same time as a one distribution, regardless of whether distributions are paid to one or more destinations (payees).

58

ASPPA WORKING FOR AMERICA'S RETIREMENT

After-tax and Rollovers Notice 2014-54 - Example 1

- Plan has no designated Roth provisions
- Participant has $250,000: $200,000 pre-tax, $50,000 after-tax
- Participant severs and requests distribution of $100,000
  - $200,000/$250,000 = 80% pre-tax.
  - $100,000 = $80,000 pre-tax and $20,000 after-tax
- Participant specifies $70,000 by direct rollover to qualified plan of new employer. All $70,000 is pre-tax
- Participant requests $30,000 to be paid to himself.
  - $10,000 pre-tax, subject to 20% withholding
  - $20,000 after-tax
- Within 60 days, participant rolls $12,000 to a traditional IRA.
  - $10,000 pre-tax
  - $2,000 after-tax

59

ASPPA WORKING FOR AMERICA'S RETIREMENT

After-tax and Rollovers Notice 2014-54 – Example 2

- Plan has no designated Roth provisions
- Participant has $250,000: $200,000 pre-tax, $50,000 after-tax
- Participant severs and requests distribution of $100,000
  - $200,000/$250,000 = 80% pre-tax.
  - $100,000 = $80,000 pre-tax and $20,000 after-tax
- Participant specifies $82,000 by direct rollovers
  - $50,000 to qualified plan of new employer
  - $32,000 to traditional IRA
  - $80,000 of this amount is pre-tax and $2,000 is after-tax.
  - Participant permitted to allocate pre-tax amounts between IRA and QP
- Participant requests $18,000 to be paid to himself.
  - $18,000 after-tax

60

After-tax and Rollovers
Notice 2014-54 - Example 3

- Plan has no designated Roth provisions
- Participant has $250,000: $200,000 pre-tax, $50,000 after-tax
- Participant severs and requests distribution of $100,000
  - $200,000/$250,000 = 80% pre-tax.
  - $100,000 = $80,000 pre-tax and $20,000 after-tax
- Participant specifies $82,000 by direct rollovers
  - $50,000 to qualified plan of new employer
  - $32,000 to traditional IRA
  - $80,000 of this amount is pre-tax and $2,000 is after-tax.
  - New QP cannot separately account for after-tax, Thus, entire $50,000 rolled to new QP must be pre-tax. $2,000 after-tax is all sent to traditional IRA as part of the $32,000
- Participant requests $18,000 to be paid to himself.
  - $18,000 after-tax

61

After-tax and Rollovers
Notice 2014-54 – Example 4

- Plan has no designated Roth provisions
- Participant has $250,000: $200,000 pre-tax, $50,000 after-tax
- Participant severs and requests distribution of $100,000
  - $200,000/$250,000 = 80% pre-tax.
  - $100,000 = $80,000 pre-tax and $20,000 after-tax
- Participant specifies $100,000 by direct rollovers
  - $80,000 to traditional IRA
  - $20,000 to Roth IRA
  - Participant permitted to allocate entire pre-tax portion to traditional IRA and entire after-tax portion to the Roth IRA

62

After-tax and Rollovers Notice 2014-54 – Proposed Roth Regulation

- Roth Proposed Regulations to change designated Roth rollover distribution regulations so that a participant or a direct rollover are not treated as separate distributions.

63

After-tax and Rollovers Notice 2014-54 – Proposed Roth Regulation

- Participant age 40 has $10,000 401(k) balance $9,400 of designated Roth and $600 earnings
- The participant scheduled two distributions at the same time
  - $5,000 to roll to Roth IRA, and
  - $5,000 to be paid to himself
- Notice 2014-54, pretax first by direct rollover,
  - The $600 of earnings would be included in the $5,000 directly rolled to the Roth IRA
  - The $5,000 paid to the participant would be all Roth and not subject to taxation

64

After-tax and Rollovers Notice 2014-54 – Proposed Roth Regulation

- Proposed applicability date of January 1, 2015.
- However, taxpayers may use a reasonable interpretation of these rules for distributions on or after September 18, 2014 and before January 1, 2015.

65

RMD and Beneficiary Rollover Issues

Rev. Rul. 2004-12: Assets Rolled Over Are Subject to Recipient Plan's RMD Rules

- Participant has a traditional IRA.
- IRA RMDs must commence no later than the April 1 following the year in which age 70½ is attained.
- The IRA RMD is distributed and the rest is rolled over to a 401(k) Plan.
  - The participant is not a 5% owner of the entity sponsoring the plan.
  - 401(k) RBD plan provisions for non-5% owner to the later of the April 1 following age 70½ or actual retirement, the assets that originated in the IRA will be allowed this same treatment.
  - Conversely, if rolling an in-service distribution into an IRA from a 401(k) the IRA RMD rules apply.

RMDs Not eligible for Rollover, Example

- **This year a 401(k) participant, severs at age 74, directly rolls to IRA on July 20, 2014, less RMD**
  - **RMD for 2014 is to be calculated before the direct rollover is made and the RMD may not be rolled over to the IRA**
  - ***Institution receiving rollover unable to calculate RMD for 2014 because they had no balance on 12-31-13 to use in the calculation***
    - ***Plus, Section 401(a)(9) requires qualified plan to distribute RMD, not send it to an IRA, where it may or may not be distributed***

RMDs Not eligible for Rollover
Correction of Improper Rollover of RMD

IRA Recipient Plan

- **Amount should be distributed as excess IRA contribution before tax filing deadline, including extensions**
- **This avoids the 6% excess contribution penalty on amounts above the IRA traditional contribution limit.**

Qualified Plan as Recipient Plan

- **If the RMD is rolled into a qualified plan as recipient: the RMD amount must be treated as an after-tax amount.**
- **If the plan does not accept after-tax contributions, it will have to be returned plus earnings as a corrective distribution.**

Inherited IRA Rollover

- **From Deceased IRA owner**
  - **Non-spouse beneficiary moves to inherited IRA**
  - **Spouse can roll to own IRA**
- **From QP Deceased Participant**
  - **Non-spouse beneficiary rollover to inherited IRA, eligible rollover distribution**
  - **Spouse can roll to own IRA**
- **Either of above may choose:**
  - **Inherited traditional IRA, or**
  - **Conversion to inherited Roth IRA**

Inherited IRA Rollover

- Inherited IRA is subject to 5 year rule (prior to RBD), or life expectancy payout rule
  - So, the beneficiary must take distribution under RMD rules
- Inherited IRA is a separate IRA from an individual's contributory IRA
- There are no eligibility or deduction rules for an inherited IRA
- Inherited IRA does not impact ability to contribute to traditional IRA or Roth
- Must be directly rolled to inherited IRA titled as inherited IRA
  - Inherited IRA of Adam Smith deceased for the benefit of Martha Jones

71

Spouse Beneficiary IRA vs. QP plan rules

Surviving spouse may:

- Make decedent's IRA their own, or assume IRA
- Not make decedent's QP into their own QP account

- Roll deceased spouse's IRA into his/her own IRA
- Rollover deceased spouse's QP assets to IRA or to
  - QP of a working surviving spouse, if surviving spouse's plan accepts rollovers

- Leave in decedent's IRA or QP, if the QP permits, until the year decedent would have attained age 70½
  - e.g. Surviving spouse > 70½;deceased spouse < 70½
- Take payments from QP as beneficiary, if QP permits
- Convert to a own Roth IRA or to an inherited Roth IRA

72

ASPPA
WORKING FOR AMERICA'S RETIREMENT

"Stretch" IRA Concept

Without Stretch IRA

- QP Participant dies at 85
- At 84, surviving spouse beneficiary continues plan distributions.
- Surviving spouse dies 2 years later at age 86,
- Her son, named as her beneficiary, has only her remaining schedule of 7.1 years left

With Stretch IRA

- QP Participant dies at 85
- At 84, surviving spouse beneficiary rolls into an IRA, son is beneficiary
- Surviving spouse dies 2 years later, age 86
- Son, sets-up single life expectancy payout schedule from inherited IRA, using his age 50, and has 34.2 years of payouts (versus 7.1)

73

ASPPA
WORKING FOR AMERICA'S RETIREMENT

Roth Conversion Small Business Jobs Act of 2010, IRS Notice 2010-84 Updated by American Taxpayer Relief Act of 2012; IRS Notice 2013-74

ASPPA WORKING FOR AMERICA'S RETIREMENT

Conversion of Pre-Tax to Roth

- From 2006 until September 27, 2010,
  - Pre-tax §401(k) balances were not allowed to be converted to a 401(k) Roth account.
- Small Business Jobs Act of 2010 created in-plan Roth Rollover conversion to designated Roth
- American Taxpayer Relief Act of 2012 created in-plan Roth Transfer as of 2013

75

ASPPA WORKING FOR AMERICA'S RETIREMENT

Conversion Only Within Plans That Have a Designated Roth Provision

- Conversion can only be made in a plan that has a designated Roth account provision
  - 401(k) and 403(b) and, as of 2011, 457(b) governmental plans
  - Plan may not have designated Roth provision only for conversions
  - Not available for Profit sharing, money purchase or other plans that do not have designated Roth account provision

76

Effective Date
Available for

- Law enacted September 27, 2010, conversion provision effective immediately

Available for:

- 401(k),403(b) or governmental 457(b) participants or surviving spouses
  - Not available to non-spouse beneficiaries, but:
    - non-spouse beneficiaries can convert to a Roth IRA

Within Plan Conversion to Designated Roth Requires a Distributable Event Under SBJA

- As with conversion from a QP to a Roth IRA, **between 2010 and 2012, a distributable event was required to make a within plan conversion** to a designated Roth
  - **For 2010 conversions only,**
    - Tax may be paid in 2010, or
    - Half amount taxable in 2011 and half in 2012
- Under age 59½, 10% penalty waived

- Any distributable event that is eligible for rollover is valid
- Withdrawal restrictions apply
  - In-service not available until after age 59½ for:
    - elective deferrals,
    - safe harbor 401(k) contributions
    - QNECs, QMACs

ASPPA
WORKING FOR AMERICA'S RETIREMENT

2013 In-plan Roth Transfers: No Distributable Event Required

- As of January 1, 2013, a distributable event is not required to make an in-plan Roth Conversion via an in-plan Roth "transfer",
  - Section 902 of American Taxpayer Relief Act of 2012, signed into law on January 2, 2013.
- This adds a new "transfer" option in addition to the in-plan Roth rollover option from the Small Business Jobs Act of 2010.

79

ASPPA
WORKING FOR AMERICA'S RETIREMENT

2013 and After; In-plan Roth Transfers: No Distributable Event Required

- For example:
  - Elective deferrals prior to age 59½
  - Safe harbor 401(k) contributions prior to 59½
  - QNECs, QMACs
  - Money purchase plan accounts that were transferred into a 401(k) plan
    - Need IRS guidance but believe J&S will carry over to Roth, and if so, these funds should be separately sourced

80

ASPPA WORKING FOR AMERICA'S RETIREMENT

Tax Consequences Recapture Tax

- For those converting under age 59½, the 10% penalty that was waived will be applied *if conversion withdrawn before 5 years*
  - *Penalty will not apply if distribution was due to severance from service in year age 55 attained or later*

81

ASPPA WORKING FOR AMERICA'S RETIREMENT

N. 2013-74, ATRA & SBJA IRR Rules Plan Amendment

- Guidance did not have a model amendment
- Amendment Timing, By Plan Type(Q & A 5)
- For 401(k), Safe Harbor 401(k) & Gov't. 457(b):
  - Later of last day of first plan year IRR amendment effective or 12-31-14
  - E.G. Calendar year plan starting IRR in 2013 or 2014; Adopt the plan amendment by 12-31-14
  - Safe harbor 401(k) may adopt the IRR amendment mid-year without violating the safe harbor notice

82

N. 2013-74, ATRA & SBJA IRR Rules "Otherwise Nondistributable Amounts"

- New Terms
- Otherwise Nondistributable Amounts (ONA)
  - Sources/Amounts not eligible to be distributed but that may be converted by an in-plan Roth rollover (aka Transfer)
  - ATRA Section 903 used this term
- Otherwise Distributable Amounts (ODA)
  - Sources/Amounts eligible for distribution that could be converted under in-plan Roth Rollover guidance from SBJA 2010

83

IRR Rules for ONAs: Plan Options

- A plan may restrict the type of contributions eligible for IRR and the frequency of IRRs
- Subject to 401(a)(4) Benefits, Rights and Features Testing
- E.G. A plan could provide that only Otherwise Distributable Amounts are eligible for IRR (i.e. use only the SBJA IRR rules under N. 2010-84)
  - <u>As such, the plan would not have to separately account for withdrawal restricted IRR amounts</u>

84

QUALIFIED ROLLOVER CONTRIBUTIONS i.e. Rollovers to Roth IRA

Pension Protection Act
Section 824
IRS Notice 2008-30

85

Qualified Rollover Contributions

- Notice 2008-30 created the term: Qualified Rollover Contribution (QRC) for rollover from eligible retirement plan to a Roth IRA
  - Any pretax amounts rolled via a QRC must be included in gross income for year of the rollover
- A QRC from a non Roth IRA to a Roth IRA is also called a conversion

86

Qualified Rollover Contributions

- QRC - taxable event, from a
  - qualified plan, SEP, 403(b), gov't 457(b) plan or SIMPLE IRA, provided after 2 year participation
- QRC – nontaxable event, from
  - Another Roth IRA or a designated Roth 401(k) or 403(b)
- Note: a non-Roth IRA to a Roth IRA is also called a conversion

87

Qualified Rollover Contributions Effective date

- As of January 1, 2008, PPA permits with AGI limit of $100,000 and if married must file jointly
- As of January 1, 2010, the above restrictions are removed

- Once a year IRA to IRA rollover rule not invoked by conversion from non-Roth to Roth IRA, nor from workplace employer plan to Roth IRA

88

Differences Between Roth IRA and Designated Roth

Pro-Rata Distributions, Not Ordering

- The Roth 401(k), 403(b) and governmental 457(b) will not have the same distribution ordering rules as the Roth IRA
- Roth IRA – you can take after-tax contributions out first and leave the earnings
- Designated Roth plans – as stated earlier, you must withdraw pro-rata (Roth and earnings) of non-qualified distributions (if not taking the entire amount)

Roth IRA Distribution - "Ordering Rules" When There Are Conversion Funds

- **Roth IRAs have an *ordering of which sources are to be distributed first* (instead of pro-rata)**
  - Note: **All Roth are aggregated** for these rules (Roth and non-Roth are not aggregated)
- ***First: Roth IRA contributions* OR *rollovers from designated Roth accounts***
- ***Second: Converted funds***
  - ***FIFO:*** Funds that were taxable
  - ***FIFO*:** Funds not taxable such as non-deductible IRA
- ***Third:*** Earnings

Roth IRA Distribution Ordering Rules - Example

- ***In 2015, Roth IRA has a cumulative amount of $15,000 of Roth IRA contributions, excluding earnings***
- In addition, ***there is $40,000 of conversion from non-Roth IRA in 2012***
- In ***2015, individual (age 35) withdraws $17,000***
  - The first ***$15,000 is treated as from the regular Roth IRA contributions***
  - ***$2,000 is treated as from the conversion amount***
  - The ***$2,000 is subject to the 10% penalty***, due to withdrawal being made before 5 years of conversion

Leave in 401(k) vs. Roll to an IRA

IRA Assets vs. 401(k) Assets

- IRAs approximately 6.2 Trillion
- 401(k)s approximately 4 Trillion
- Amount of IRA assets increasing at over $300 Billion per year
  - Over 95% in the form of Rollovers

94

Best or Worst Practices Re: 401(k) Rollovers to IRAs

- Several different regulatory Agencies have focused their attention on practices involved with the soliciting of 401(k) participants to roll their 401(k) retirement nest egg into an IRA Rollover.
  - Government Accountability Office (GAO)
  - Department of Labor (DOL)
  - Financial Industry Regulatory Authority (FINRA)
  - Securities and Exchange Commission (SEC)

95

401(k) Rollovers to IRAs FINRA Regulatory Notice 2013-45

- Reg. N. 2013-45 issued as a reminder of obligations a broker-dealer firm has when making a recommendation to a 401(k) participant to roll to an IRA
  - When firm recommends that an investor sell his 401(k) assets and roll cash to an IRA, the recommendation to sell plan-held securities is subject to Rule 2111 suitability standard to the same degree as the recommendation to purchase securities in IRA.
  - Rollover suitability obligations extend not only to pros and cons of plan maintaining the distribution eligible account, but to participant's current employer's plan.

96

401(k) Rollovers to IRAs FINRA Regulatory Notice 2013-45

- They can no longer just urge the participant to make an IRA rollover, even if the securities in the IRA would be suitable, but they must have a reasonable basis to support the suitability of the IRA rollover distribution recommendation by undertaking an evaluation of the pros and cons of:
  - Remaining in the old employer plan, or
  - Rolling over to the current employer's plan, or
  - Rolling over to an IRA product that the firm is authorized to sell, or
  - Taking a taxable distribution

401(k) Rollovers to IRAs FINRA Regulatory Notice 2013-45

- Suitability Factors Include:
  - How satisfied is the investor with the range of plan investment options?
  - Comparison of 401(k) and IRA for:
    - **Investment related and administrative fees**
    - **Services available under the plan vs. the IRA**
    - **Penalty free 401(k) withdrawals if severed at age 55, versus age 59½ from IRA**
    - **Protection from creditors and legal judgments**
    - **Required minimum distributions**
    - **Special tax treatment, i.e. NUA, grandfathered provisions such as 10 year averaging**

FINRA Investor Alert - The IRA Rollover: 10 Tips to Making a Sound Decision

1. **Evaluate your transfer options.**
2. **Minimize taxes by rolling Roth to Roth and traditional to traditional.**
3. **Think twice before you do an indirect rollover.**
4. **Be wary of "Free" or "No Fee" claims.**
5. **Realize that conflicts of interest exist.**
6. **Compare investment options and other services.**
7. **Understand fees and expenses.**
8. **Engage in a thoughtful discussion with your financial or tax professional.**
9. **Age matters.(Severance 55 to 59½, 70½ or older)**
10. **Assess the tax implications of appreciated company stock.**

99

401(k) Rollovers to IRAs Government Accountability Office

- Government Accountability Office (GAO) report reflects that 7 of 30 money management firms encouraged 401(k) participants to make a rollover to an IRA with misleading statements
  - Including **statements that there were no fees on the IRA rollovers**
    - 5 of 10 websites indicated no fees
  - *Even though it would have been better for the 401(k) participants to leave their assets in the 401(k), the firms encouraged IRA rollovers with misleading statements to harvest bigger fees.*
  - **90% of new IRA money comes from employer plans**

100

401(k) Rollovers to IRAs Government Accountability Office

- GAO report concerned over **false marketing that at termination of employment, a rollover to an IRA is only option, or the only sound option!**
- GAO report also notes
  - **The recommended IRA often has higher levels of fees and expenses relative to the 401(k)**
  - There are administrative obstacles to consolidating 401(k) balances when changing jobs.
    - **IRS and DOL portability reforms recommended**

101

401(k) Rollovers to IRAs Government Accountability Office

- Urges the DOL to include in its definition of fiduciary a requirement that plan service providers assisting participants with distribution options provide *conflict-of-interest disclosures and the conditions under which they are subject to ERISA fiduciary standards or security law standards, and what those standards mean for the participant*.
- Urged IRS and DOL to work together to remove impediments on plan-to-plan rollovers.

102

ASPPA WORKING FOR AMERICA'S RETIREMENT

401(k) Rollovers to IRAs Securities and Exchange Commission

- SEC Office of Compliance and Inspections and Examinations:
  - including in *2014 priorities a focus on IRAs*
  - Examination of the sales practices of investment advisors that target 401k) assets for IRA rollovers.
  - Whether advisors may be misrepresenting the features and benefits of the IRA Rollover
  - Examining broker-dealers and investment advisors for conflict-of-interest when recommending 401(k) assets be moved to an IRA rollover in connection with a client's change of employment.

ASPPA WORKING FOR AMERICA'S RETIREMENT

Current Guidance Department of Labor, AO 2005-23A

- A recommendation that a participant roll over his 401(k) to an IRA to take advantage of investment options not available in the plan does not constitute investment advice, with respect to plan assets
  - DOL does not view a recommendation to take a distribution as advice or a recommendation concerning a particular investment (*i.e.*, purchasing or selling securities or other property)

401(k) Rollovers to IRAs Department of Labor, AO 2005-23A

– A plan fiduciary responding to participant questions about the advisability of taking a distribution, or the investment of amounts withdrawn from the plan.
  - **Who is exercising discretionary authority respecting management of the plan and must act prudently and solely in the interest of the participant.**
  - E.G. a fiduciary causes the participant to take a distribution and invest the proceeds in an IRA managed by the fiduciary, ➔ fiduciary may be using plan assets in their own interest, a violation of ERISA 406(b)(1).

105

401(k) Rollovers to IRAs Department of Labor, AO 2005-23A

- An advisor - who is not otherwise a plan fiduciary - and who recommends that a participant withdraw funds from the plan and invest the funds in an IRA has not engaged in a prohibited transaction – even if the advisor will earn management or other investment fees related to the IRA
  – This is not investment advice nor is such a recommendation, in and of itself, an exercise of authority or control over plan assets that would make a person a fiduciary within the meaning of section 3(21)(A) of ERISA

106

401(k) Rollovers to IRAs Department of Labor, AO 2005-23A

- A person making such recommendations would not be a fiduciary solely on the basis of making such recommendations, and would not engage in an act of self-dealing if he or she advises the participant to roll over his account balance from the plan to an IRA that will pay management or other investment fees to such person.
  - Provided not a plan fiduciary on some other basis.
  - Note: if a person exercised control over the participant's account in making the distribution and reinvestment outside the plan, the person would be a fiduciary and would be subject to the ERISA's fiduciary obligations.

107

401(k) Rollovers to IRAs Department of Labor

- Financial institutions providing 401(k) services dislike this AO as it does not permit them to retain the 401(k) assets when they are eligible for rollover to an IRA.
  - Thus, firm's that had nothing to do with the 401(k) would have the advantage of being able to market to those participants.

108

Form 1099-R
Reporting Roth Rollovers and Conversions

2014 Form 1099-R

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code

1 Gross distribution $

2a Taxable amount $

OMB No. 1545-0119

2014

Form 1099-R

Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

2b Taxable amount not determined ☐ Total distribution ☐

Copy 1 For State, City, or Local Tax Department

PAYER'S federal identification number

RECIPIENT'S identification number

3 Capital gain (included in box 2a) $

4 Federal income tax withheld $

RECIPIENT'S name

5 Employee contributions /Designated Roth contributions or insurance premiums $

6 Net unrealized appreciation in employer's securities $

Street address (including apt. no.)

7 Distribution code(s)

IRA/ SEP/ SIMPLE ☐

8 Other $ %

City or town, state or province, country, and ZIP or foreign postal code

9a Your percentage of total distribution %

9b Total employee contributions $

10 Amount allocable to IRR within 5 years $

11 1st year of desig. Roth contrib.

12 State tax withheld $ $

13 State/Payer's state no.

14 State distribution $ $

Account number (see instructions)

15 Local tax withheld $ $

16 Name of locality

17 Local distribution $ $

Form 1099-R www.irs.gov/form1099r Department of the Treasury - Internal Revenue Service

Designated Roth and Form 1099-R

- A separate Form 1099-R must be issued for designated Roth account distributions.
- **Code B is for all Roth distributions. (Qualified distributions and distributions which have not yet become qualified).**
- **Box 11 is for reporting the first year of the designated Roth account**
- **Box 10 is for reporting the distribution of an In-plan Roth Rollover (IRR) that has been distributed before 5 years after the conversion**

Designated ROTH Distribution
Severance and Partial Distribution

- Participant, age 40, has $10,000 balance
  - $9,400 of designated Roth contributions
  - $600 of earnings
- Participant withdraws $5,000
  - $4,700 is Roth; $300 earnings
- **Form 1099-R**
  - ***Box 1*** ***$5,000***
  - ***Box 2a*** ***$300***
  - ***Box 4*** ***$60 (20% mandatory withholding)***
  - ***Box 5*** ***$4,700 (Roth basis)***
  - ***Box 7*** ***Code B1***
  - ***Box 11*** ***First year of 5-year clock.***

Designated ROTH Distribution
Severance & Direct Rollover to Roth IRA

- **8 Months Later** participant has $5,000 balance remaining
  - $4,700 of designated Roth contributions
  - $300 of earnings
- Participant directly rolls $5,000 to Roth IRA
  - $4,700 is Roth; $300 earnings
- **Form 1099-R**
  - ***Box 1*** ***$5,000***
  - ***Box 2a*** ***$0***
  - ***Box 4*** ***$0***
  - ***Box 5*** ***$4,700 (Roth basis)***
  - ***Box 7*** ***Code H***
  - ***Box 11*** ***First year of 5-year clock.***

113

Designated ROTH Distribution
Severance & Direct Rollover to Roth IRA

- If this participant scheduled both distributions at the same time
- Starting with $10,000 Roth of which $600 was earnings and requested $5,000 to roll to Roth IRA and $5,000 to be paid to himself
- Notice 2014-54, pretax first by direct rollover, So the $600 earnings would go to the Roth IRA;
- **Form 1099-R for direct rollover**
  - ***Box 1*** ***$5,000***
  - ***Box 2a*** ***$0***
  - ***Box 4*** ***$0***
  - ***Box 5*** ***$4,400 (Roth basis)***
  - ***Box 7*** ***Code H***
  - ***Box 11*** ***First year of 5-year clock.***
- **Form 1099-R for distribution to Participant**
  - **Box 1 $5,000; Box 2a $0; Box 5 $5,000; Box 7 Code B**

114

QP Non-ROTH Distribution in 2014; Severance & Direct Rollover to Roth IRA (Conversion)

- Participant has $120,000 balance
  - $108,000 of ER, EE non-Roth contributions. Plus earnings
  - $12,000 of after-tax
- Participant directly rolls $120,000 to Roth IRA
- **Form 1099-R**
  - ***Box 1*** ***$120,000***
  - ***Box 2a*** ***$108,000***
  - ***Box 4*** ***$0***
  - ***Box 5*** ***$12,000 (after-tax basis)***
  - ***Box 7*** ***Code G***

QP Non-ROTH DISTRIBUTION in 2014 Direct Rollover to Traditional IRA

- **JP Participant has $200,000 balance**
  - **$190,000 of ER, EE non-Roth deferrals + earnings**
  - **$10,000 of after-tax**
- **JP Participant directly rolls $200,000 to Traditional IRA**
- **Form 1099-R**
  - ***Box 1*** ***$200,000***
  - ***Box 2a*** ***$0***
  - ***Box 4*** ***$0***
  - ***Box 5*** ***$10,000 (after-tax basis)***
  - ***Box 7*** ***Code G***
- ***Form 5498, Traditional IRA***
  - ***Box 2: $190,000***
  - ***No taxation on entire amount***

QP Non-ROTH DISTRIBUTION in 2014
Direct Rollover to Traditional IRA

- **JP Participant:$200,000 balance; arranges total distribution**
  - **$190,000 of ER, EE non-Roth deferrals + earnings**
  - **$10,000 of after-tax**
- **JP Participant directly rolls $190,000 to Traditional IRA**
- **Form 1099-R**
  - ***Box 1 $190,000***
  - ***Box 2a $0***
  - ***Box 4 $0***
  - ***Box 7 Code G***
- ***Form 5498, Traditional IRA***
  - ***Box 2: $190,000, No taxation on entire amount***
- ***Form 1099-R***
  - ***Box 1 $10,000***
  - ***Box 2a $0***
  - ***Box 5 $10,000***
- ***Per Notice 2014-54***

QP In-plan ROTH Rollover in 2014
aka In-plan Roth Conversion

- **Participant M: $75,000 balance; over age 59½; in-service distribution; all pre-tax sources: $75,000 of ER matching and EE pre-tax elective deferrals. Plus earnings**
- **Participant M makes an in-plan Roth Rollover to a designated Roth account of all $75,000**
- **Form 1099-R**
  - ***Box 1 $75,000***
  - ***Box 2a $75,000***
  - ***Box 4 $0***
  - ***Box 5 $0***
  - ***Box 7 Code G***
- ***2014 Form 8606, Participant Files with Form 1040***
  - ***Part III: Report in-plan Roth Rollover***

QP In-plan ROTH Rollover in 2014 aka In-plan Roth Conversion

- Participant M: $150,000 balance; age 40; in-service distribution for purpose of in-plan Roth rollover under ATRA; pre-tax sources: $145,000 of ER matching, safe harbor QNEC, EE pre-tax elective deferrals; $5,000 after-tax and earnings
- Participant M makes an in-plan Roth Rollover to a designated Roth account of all $150,000
- Form 1099-R
  - *Box 1 $150,000*
  - *Box 2a $145,000*
  - *Box 4 $0*
  - *Box 5 $5,000*
  - *Box 7 Code G*
- *2014 Form 8606, Participant Files with Form 1040*
  - *Part III: Report in-plan Roth Rollover*

QP Designated ROTH Direct Rollover to Roth IRA 2014

- JP Participant has $50,000 of 401(k) Roth balance
  - $46,000 Roth contributions.
  - $4,000 earnings
- JP Participant directly rolls $50,000 to ROTH IRA
- Form 1099-R
  - *Box 1 $50,000*
  - *Box 2a $0*
  - *Box 4 $0*
  - *Box 5 $46,000 (after-tax basis)*
  - *Box 7 Code H*
  - *1st year of Roth 2008*
- *Form 5498, Roth IRA*
  - *Box 2: $50,000*
  - *No taxation on $4,000*

Rollover Charts
An Important Reference Tool

MHCO To / From	IRA & SEP	SIMPLE IRA	403(b)	Gov't 457(b)	Qualified Plan	Des. Roth k, b, 457	Roth IRA
Traditional IRA	Y,G	N	Y,A	Y,A	Y,A	N	N,F
SIMPLE IRA	Y,B	Y,B	Y,B	Y,B	Y,B	N	Y,B
403(b) Non-Roth	Y	N	Y,D	Y	Y,D	N	N.E
Gov't 457(b)	Y	N	Y	Y	Y	N	N.E
Qualified Plan Other Than Roth	Y	N	Y,D	Y,C	Y,D	N	N,E
Designated Roth (k), b), or 457(b) by Direct Rollover	N	N	N	N	N	N	Y
Roth IRA	N	N	N	N	N	N	Y,G

SECOND LETTER LEGEND
A Only pre-tax amounts from an IRA or SEP may be rolled to these plans.
B Rollovers from SIMPLE IRAs are prohibited until after 2 years of participation.
C Pre-tax amounts only.
D After-tax amounts may be received only by direct transfer or direct rollover.
E Direct rollover/conversion from non-Roth QP, 403(b) or Gov't 457 to Roth IRA
F Traditional IRAs and SEP IRAs may not be rolled into a Roth IRA, (conversion available).
G Beginning in 2015, only one IRA-to-IRA rollover per 12 month period, regardless of how many IRAs.

ASPPA WORKING FOR AMERICA'S RETIREMENT

IRS Rollover Chart
Revised 11/17/14

ROLLOVER CHART

11/17/2014

Roll From \ Roll To	Roth IRA	Traditional IRA	SIMPLE IRA	SEP-IRA	Governmental 457(b)	Qualified Plan[1] (pre-tax)	403(b) (pre-tax)	Designated Roth Account (401(k), 403(b) or 457(b))
Roth IRA	YES[2]	NO	NO	NO	NO	NO	NO	NO
Traditional IRA	YES[3]	YES[2]	NO	YES[2]	YES[4]	YES	YES	NO
SIMPLE IRA	YES,[3] after two years	YES,[2] after two years	YES[2]	YES,[2] after two years	YES,[4] after two years	YES, after two years	YES, after two years	NO
SEP-IRA	YES[3]	YES[2]	NO	YES[2]	YES[4]	YES	YES	NO
Governmental 457(b)	YES[3]	YES	NO	YES	YES	YES	YES	YES[3,5]
Qualified Plan[1] (pre-tax)	YES[3]	YES	NO	YES	YES[4]	YES	YES	YES[3,5]
403(b) (pre-tax)	YES[3]	YES	NO	YES	YES[4]	YES	YES	YES[3,5]
Designated Roth Account (401(k), 403(b) or 457(b))	YES	NO	NO	NO	NO	NO	NO	YES[6]

[1] Qualified plans include, for example, profit-sharing, 401(k), money purchase and defined benefit plans
[2] Beginning in 2015, only one rollover in any 12-month period. A transitional rule may apply in 2015.
[3] Must include in income
[4] Must have separate accounts
[5] Must be an in-plan rollover
[6] Any amounts distributed must be rolled over via direct (trustee-to-trustee) transfer to be excludable from income
For more information regarding retirement plans and rollovers, visit Tax Information for Retirement Plans.

ASPPA WORKING FOR AMERICA'S RETIREMENT

Questions and Comments

- Questions or comments??
- My e-mail address is:
  - **WCGrossman@dstrs.com**
- Thanks for Attending

124