

FAQs REGARDING IRAs

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

IRAs are the investment vehicles for IRA-based plans (e.g., SEP, SIMPLE IRA and SARSEP plans. All SEP-IRAs and SIMPLE IRAs are subject to the same investment rules as traditional IRAs.

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GENERAL

1. Can an individual contribute to a traditional IRA if he or she has other retirement plans?

Yes, individuals can contribute to a traditional IRA whether or not they are covered by another retirement plan. However, they may not be able to deduct all of their contributions if they or their spouses are covered by an employer-sponsored retirement plan. [Note that contributions to a Roth IRA are not deductible and income limits apply.]

2. How can an individual convert a traditional IRA to a Roth IRA?

A traditional IRA can be converted to a Roth IRA by:

- Rollover: A distribution from a traditional IRA can be contributed to a Roth IRA within 60 days after distribution.
- Trustee-to-trustee transfer: The financial institution holding the traditional IRA assets will provide directions on how to transfer those assets to a Roth IRA with another financial institution.

- Same trustee transfer: As with the trustee-to-trustee transfer, the financial institution holding the traditional IRA assets will provide directions on how to transfer those assets to a Roth IRA. In this case, things should be simpler because the transfer occurs within the same financial institution.

A conversion results in taxation of any untaxed amounts in the traditional IRA. Also, the conversion is reported on Form 8606, Nondeductible IRAs.

DISTRIBUTIONS

1. Can an IRA be rolled over into a qualified retirement plan (e.g., 401(k), profit-sharing, etc.)?

An IRA can be rolled over into a qualified retirement plan, assuming the qualified retirement plan has language permitting such rollovers.

2. Can an IRA accept rollovers from a qualified retirement plans?

Provided the IRA document permits rollovers, almost any type of plan distribution can be rolled over into it.

3. Are in-service distributions allowed from an IRA-based plan (e.g., SEP, SARSEP or SIMPLE IRA plan)?

There are no prohibitions on distributions from IRA-based plans. A participant can take distributions at any time. However, in addition to the distribution being taxable, it may be subject to a 10% additional tax if the participant has not reached age 59 1/2. If the distribution is taken in the first 2 years of participation in a SIMPLE IRA plan, the additional tax is increased to 25%.

4. Are hardship distributions allowed from an IRA-based plan?

As in-service distributions are allowed, so are "hardship" distributions, subject to the same conditions.

5. Must distributions be made to IRA-based plan participants who are over age 70 1/2, if they are still working? What about to the owner of the company?

Both the owner and any employees over age 70 1/2 must take required minimum distributions. Unlike qualified plans (e.g., 401(k), profit-sharing, etc.), there is no exception for non-owners who have not retired.

6. How much must be taken out of an individual's IRA at age 70 1/2?

Required minimum distributions apply each year beginning with the year the account owner turns age 70 1/2. The required minimum distribution for each year is calculated by dividing the IRA account balance as of December 31 of the prior year by the applicable distribution period or life expectancy. An account owner can determine his or her applicable distribution period or life expectancy by using the Tables in Appendix C of Publication 590. Table I is used by beneficiaries. Table II is for use by owners who have spouses who are both the IRA's sole beneficiary and who are more than 10 years younger than the owner. Table III is for use by all other owners.

7. If an IRA is cashed in before age 59 1/2, what forms need to be filled out?

Regardless of age, the IRA owner will need to file a Form 1040 and show the amount of withdrawal from the IRA. Since the withdrawal was taken before reaching age 59 1/2, unless certain exceptions listed in Publication 590 Individual Retirement Arrangements (IRAs) are met, the IRA owner will need to pay an additional 10 percent tax on early distributions from qualified retirement plans that is reported on Form 1040. A Form 5329 Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts, may need to be completed and attached to the tax return.

8. Can the 10% additional tax for an early withdrawal from an IRA be deducted in the Adjusted Gross Income section of Form 1040 as a penalty on early withdrawal of savings?

No, the additional 10% tax on early distributions from qualified retirement plans does not qualify as a penalty for withdrawal of savings.

9. Does the participant request the distribution check directly from the employer or from the financial institution where the IRA-based plan is invested?

The participant will need to contact the financial institution holding the IRA assets. After the employer sends the IRA plan contributions to the financial institution, that institution will have control over the funds.

LOANS

1. Can the outstanding loan balance from a retirement plan be rolled over into an IRA and the loan payments made to the IRA instead of the other plan?

IRAs (including SEP-IRAs) do not permit loans. Therefore, repaying a loan balance from one plan by transferring the loan balance and making loan payments to an IRA is not allowed. If this transaction was attempted, the loan would be treated as a distribution at the time of the attempted rollover.

2. The bank refuses to give a loan from an IRA-based plan - isn't it required to allow loans?

IRAs are the investment vehicles for IRA-based plans. As discussed in the above Q&A, IRAs do not permit loans. So banks aren't allowed to give loans from an IRA.

INVESTMENTS

1. Are there any restrictions on the things an IRA can be invested in?

The law does not permit IRA funds to be invested in collectibles.

If an IRA invests in collectibles, the amount invested is considered distributed in the year invested. The account owner may have to pay a 10% additional tax on early distributions. Here are some examples of collectibles: artwork, rugs, antiques, metals (there are exceptions for certain kinds of bullion), gems, stamps, coins (there are exceptions for certain coins minted by the U.S. Treasury), alcoholic beverages, and certain other tangible personal property. Check Publication 590, Individual Retirement Arrangements (IRAs), for more information on collectibles.

Finally, IRA trustees are permitted to impose additional restrictions on investments. For example, because of administrative burdens, many IRA trustees do not permit IRA owners to invest IRA funds in real estate. IRA law does not prohibit investing in real estate but trustees are not required to offer real estate as an option.

2. Are the basic investment rules different for SEPs and SIMPLE IRA plans?

The basic investment vehicle for each of these plans is an IRA, and the investment restrictions apply equally to all types of IRAs.

3. Can losses in an IRA be deducted on a participant's income tax return?

No, neither IRA losses nor IRA gains are taken into account on a participant's tax return while the IRA is on-going.