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ROTH IRA CONSIDERATIONS

The following discusses the pros and cons and general considerations of utilizing or converting to a Roth IRA. We find that oftentimes taking advantage of a Roth IRA is economically prudent. A chart comparing the financial results of annual contributions to either a traditional or a Roth 401(k) is provided.

ADVANTAGES

The advantages of a Roth401k or IRA are as follows:

1. Funds accumulate tax free in a Roth 401(k), and when the participant reaches 70½, he can convert to a Roth IRA and avoid required minimum distributions. Thus, the funds can accumulate tax free for his life.

2. In a Roth IRA, unlike a traditional 401(k) or IRA, there is no required minimum distribution to a surviving spouse after the participant dies, so there is further tax free buildup.

3. A participant in a traditional qualified plan could "convert" that plan to a Roth IRA. This means any qualified plan (i.e. profit sharing, 401(k), defined benefit, etc.) could convert to a Roth IRA.

4. There is a special rule in 2010; if there is a conversion then, election could be made to defer the taxable income equally over 2011 and 2012.

5. Many states, such as Illinois, do not subject to income tax a distribution or conversion to a Roth IRA.

6. Conversion could be on any date from January 1 to December 31 of any year. The participant could reconsider his conversion decision, however, and has until the last date of tax filing extension, October 15 of the following year, to recharacterize (undo) the transaction.

7. Estate tax is lowered by converting before death by the amount of income tax paid then. However, this may be neutralized because of "income in respect of a decedent" under Code Section 691(c). Specifically, there is a difference because of the state estate or inheritance tax, which is not deductible under that Code section. States that have decoupled from the Federal estate tax and have their own state estate tax, such as Illinois, cannot fully benefit from that Code section. Thus, paying income tax on the conversion reduces a taxpayer's gross estate and his Federal estate tax thereon. Nevada, Arizona, Florida or California residents, for example, have no estate tax.

8. Even in states that have no estate tax (e.g. Nevada, Arizona, Florida or California), conversion has the advantage of tax free build up over the heir's life expectancy.

Disadvantages

1. The Employee Retirement Income Security Act ("ERISA") provides asset protection in bankruptcy and non bankruptcy actions for pension and profit sharing plans, including 401(k) plans, 403(b) plans, defined benefit plans and money purchase plans. Importantly, to come within ERISA, there must be an "employee." Thus, plans covering only the owner and his spouse do not come within

the ERISA protection. Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCA"), creditor protection is applicable only in bankruptcy. There is unlimited bankruptcy exemption protection for rollover IRAs. A traditional, contributory IRA, or a Roth IRA, is afforded bankruptcy protection to the extent only of $1,000,000 exemption.

To be clear, when ERISA operates it does consistently cover both bankruptcy and non bankruptcy situations. BAPCA only applies for bankruptcy. Outside of bankruptcy, state law must be reviewed for protection of IRA assets.

2. Conversion accelerates income taxation of the amount converted. This is tempered in 2010 by the option of spreading the taxable income equally over years 2011 and 2012.

3. No upfront tax deduction is available, as in a traditional 401(k) or IRA.

Observations

1. In a traditional 401(k)/IRA, when the participant dies and the spouse takes over, the spouse can elect a "rollover," so that the 401(k)/IRA is hers. Thus, required minimum distributions to her begin when she attains 70½, and will be over her single life expectancy. Contrast this with a Roth IRA in which no distribution to a surviving spouse is required. In either a traditional or Roth IRA, upon the death of the surviving spouse, the spouse could designate her own beneficiaries. It would be an "inherited" IRA for her individual beneficiaries, which is then spread over their life expectancies.

2. Note for marrieds filing joint returns in 2010, the income tax bracket from $137,300 to $209,250 is 28%. From $209,250 to $373,650, it is 33%. Over $373,650, it is 35%. After 2010, the

brackets likely will increase. The new 3.8% surtax on "net investment income," imposed by the 2010 Health Care Reinvestment Act, is avoided by Roth IRA distributions.

3. Under the Pension Protection Act of 2006, spouse and non-spouse beneficiaries can roll over, via trustee to trustee transfer, from a qualified retirement plan to an inherited IRA, amounts inherited as a designated beneficiary. Specifically, a child can transfer retirement plan funds to an inherited IRA, and take distributions over his life expectancy.

4. Although a surviving spouse need not take required minimum distributions from a Roth IRA, non-spouse beneficiaries must.

5. Note that a Roth conversion with the taxpayer's same tax bracket, using funds from within the IRA itself, is tax neutral. On the other hand, using outside funds is generally beneficial, because the inside buildup is tax free and the outside buildup is taxable.

6. A taxpayer need not convert all qualified plans to a Roth IRA.

7. Regardless of the plan or IRA, if there is an individual non-spouse beneficiary, distributions must start by December 31 of the year following the year of death of the participant, and it is payable over the life expectancy of the beneficiary.

8. If the participant dies after his required beginning date, distributions from the traditional IRA must be taken for the year of death based upon the owner's age in the year of death under the Uniform Lifetime Table. Thereafter, the life expectancy factor is determined by referencing the owner's age in the year of death, using the Single Life Table under 1.401(a)(9)-9 Answer 1. This is not applicable to Roth IRAs, wherein the owners are deemed to die before their required beginning date.

9. Conversion and Reconversion example. What happens if you convert on June 30, 2010 and the market collapses immediately thereafter, like it did in 2008, then it would be immediately recharaterized in November 2010. Thereafter, in January 2011, it would reconvert based upon the lower values at January 1, 2011.