

Ch 5 IRAs and Qualified Plans

TCJA Changes

Repeal Of Special Rule Permitting Recharacterization Of Roth Conversions

Effective date: TYBA December 31, 2017.

Sunset date: None

See IRS FAQs

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Rollover Period For Plan Loan Offset Is Extended – Section 402(c)(3)

- A **qualified plan loan offset** amount arises from:
 - 1) termination of the plan or
 - 2) the failure to meet the repayment terms of the loan **because of the employee's severance from employment.**
- Per the TCJA, the employee has **until the due date of Form 1040 (including extensions)** for the year of the offset to rollover to another plan or IRA.
 - for TYBA 2017 (no sunset);
 - Up from 60 days after offset.

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Bipartisan Budget Act (H.R. 1892) (Enacted Feb. 9, 2018)

Relief Relating to Retirement Plans

Hardship Withdrawal Rules Relaxed

- 1) Eliminates the suspension of contributions to the employer's 401(k) plan for 6 months following the receipt of a hardship withdrawal.
- 2) Eliminates the requirement that a participant take all available retirement plan loans before receiving a hardship distribution.
- 3) Expands the sources of 401(k) plan accounts currently available for hardship withdrawals to include qualified non-elective contributions, qualified matching contributions, and earnings on those amounts, together with earnings on elective deferrals.

Effective for Plan years beginning after December 31, 2018.

Distributions Involving Invalid Levy

The Feb. 9, 2018 Budget Act allows an employer to permit individuals who receive retirement plan distributions **to pay for a federal tax levy that is later deemed to be invalid, to repay those distributions, thereby avoiding taxation and possible penalties.**

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California Wildfire Relief Regarding Retirement Plans -- Temporary

The Budget Act also provides special tax relief for “qualified wildfire distributions”, which are defined as “any distribution from an eligible retirement plan made on or after October 8, 2017, and before January 1, 2019, to an individual whose primary place of abode during **any portion of the period from October 8, 2017, to December 31, 2017, is located in the California wildfire disaster area and who has sustained an economic loss by reason of the wildfires to which the declaration of such area relates.**”

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Non-TCJA Retirement Plan Developments

REG-107813-18 (11/14/2018) -- Prop. Regs. Make It Easier to Take Hardship Distributions from Section 401(k) Plans. Supplement

- Distributions are deemed to be made on account of an immediate and heavy financial need if relating to damage to a principal residence that would qualify for a casualty deduction under pre-TCJA law section 165.
- Implements BBA changes.

“Backdoor” Roth Contributions are Still OK

TCJA Legislative History Explanation of Prior Law:

“Although an individual with AGI exceeding certain limits is not permitted to make a contribution directly to a Roth IRA, **the individual can make a contribution to a traditional IRA and convert the traditional IRA to a Roth IRA**, as discussed below.”

- The TCJA did not change this capability.

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Thompson, No. 18-cv-01675-JCS (ND CA, 8/30/18)

- §72(t) 10% Penalty Not Waived For Withdrawal Under Threat of Levy.

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Mazzei, 150 TC No. 7 (3/5/18) FSC and Roth IRA Scheme (En Banc)

- Made initial \$2,000 contributions to their respective Roth IRAs in 1998.
- The taxpayers also **indirectly transferred \$533,057** from their business to their Roth IRAs between 1998 and 2002 by routing those funds **through an FSC**.
- The Tax Court concludes that the **taxpayers and not their Roth IRAs**, were the **substantive owners of the FSC stock** at all relevant times. Holdings:
 - All FSC income tax taxable to the taxpayers, and
 - Excess contributions were made to their Roth IRAs.

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“No part of the FSC statutes and regulations states, or even implies, that **purchases or transfers of FSC stock, or any transactions at the shareholder level or between the FSC and its owners**, are **exempt from application of the substance doctrines**, which are our normal “tool[s] of statutory interpretation”. *Santander Holdings USA, Inc. v. Commissioner*, 844 F.3d at 21. Therefore, the normal substance doctrines apply in these cases, at least for the purpose of determining the economic realities of the relationships among petitioners, their Roth IRAs, and the FSC.” (*Mazzei*)

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“As described, the Roth IRAs effectively paid nothing for the FSC stock, put nothing at risk, and from an objective perspective, could not have expected any benefits. From that nominal initial investment, petitioners claim that their Roth IRAs earned dividends totaling \$533,057 over four years.

The Tax Court distinguished the 6th Circuit opinion in Summa Holdings.

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Judge Holmes Dissenting “Gingerly”

“In *Summa Holdings, Inc. v. Commissioner* (Summa II...the Sixth Circuit—in the course of reversing our decision in a case nearly identical to this one—warned that a court that construes the Tax Code against its language and in favor of judge-made doctrine acts like Caligula, **who famously posted tax laws in fine print and so high that Romans could not read them.** See Suet. Cal. 41.

It is our custom to reconsider an issue when a circuit court reverses us. And **today we have to choose either a well-reasoned opinion by a highly respected judge in America's heartland, or Caligula.**

We pick Caligula.

I gingerly dissent. **”**



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