

## **PROTECT YOUR BENEFICIARIES!**

### **Know The Rules of Your Employer's Retirement Plan and Move Your Money To AN IRA NOW!**

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With the passage of EGTRRA – the **E**conomic **G**rowth and **T**ax **R**elief **R**econciliation **A**ct – in 2001, the landscape around whether to leave money in an employer's retirement plan, like a 401k, or roll it to an IRA changed dramatically. Unfortunately, many employers and their Human Resources representatives are not versed in the impact on beneficiaries who inherit money via an employer retirement plan. Even employers and HR people who are aware of the new rules are doing little to encourage employees to move money to an IRA. Perhaps there is a fear that if employees move their money it would send a message of "no confidence" in the employer. Sometimes employees think they are getting a great deal on the commissions available in the plan. Unfortunately, increasing numbers of beneficiaries are experiencing huge, unnecessary taxable events when they inherit from these employees through employer plans. Such situations are easy to avoid. As a rule, remembering that exceptions prove the rule, employees should move money from their employer's plan to an IRA as soon as it is available. It's all about planning and knowing your employer's plan.

First, it is important to know where to find this plan information. Every employer has different rules! Federal Regulations require that employers provide, in writing, at least a summary of the retirement plan to all employees upon request. In retirement-speak, this document is called the SPD or Summary Plan Description. Employers and HR representatives know about this rule and know the SPD must be provided.

Once the SPD is in hand, one only need look at the index to find "Withdrawals" or "Distributions". This section will detail what is required in terms of attained age, service, or sources of contributions to know whether access to funds is possible. Some companies allow access to retirement money while still employed and ALL employers MUST allow access after leaving employment. Because no two plans are alike, it is imperative to review the SPD from YOUR employer.

Recently, a 76-year old single woman who was still working for a large, well-known company rolled over the \$1 million+ retirement account she had in her employer's plan to an IRA. When her HR representative learned of this, she contacted the employee and told her it was an "illegal" transaction. Nothing could have been further from the truth! Federal Regulations state that all money employees have in the employer's retirement plan must be available for distribution by age 65 at the latest [IRC §§ 411(a), 411 (a)(8)]. It may be available earlier but not before age 59 ½. The plan in this case allowed access at age 59 ½. So where was the "illegal" transaction? There wasn't one. An ill-informed HR representative caused an even more ill-informed employee to panic, cancel the rollover, thereby moving the money back to the employer's plan. The result is that if this employee dies with her money still in the plan, her non-spouse beneficiaries will have to take a lump sum, TAXABLE distribution of all the money. \$1 million dollars at ordinary income rates is big as

well as avoidable. At age 76, it is certainly fitting to have at least a crude estate plan in place; common sense dictates more than that.

However, why the concern over whether the money is in the employer plan or an IRA? What difference does it make? It makes a lot of difference. At the very least, money inherited through an IRA by anyone other than a spouse can be withdrawn using a calendar based on the beneficiary's life expectancy. The non-spouse beneficiary can always take more money than the required minimum and pay the tax but does not have to take more than the minimum. The remaining money continues to accumulate tax-deferred. This ability to continue tax-deferred accumulation can translate into substantial wealth over time. Since spouses have different options and rules, they are not part of this discussion.

Money inherited through a company sponsored retirement plan, however, is subject to a mandatory distribution of the entire amount with 20% withheld for taxes. This is not A rule but it is THE rule which prevails among all for-profit companies today. The reason for this will be obvious later in this discussion. Some companies still allow a beneficiary to leave the money for up to 5 years. This was a common practice under pre-EGTRRA rules. Surviving spouses, and only surviving spouses, have the right to roll the money to their own IRA. The time limit for a surviving spouse to make this decision is frequently short and if no action is taken, the money is irrevocably distributed.

Why do for-profit companies all have mandatory lump sum distributions to beneficiaries? It is simply too expensive for the plan. A company today must be profitable and to keep children, grandchildren, sisters or brothers on their rolls as beneficiaries taking minimum distributions ad infinitum is not practical. Only an IRA account MUST allow the minimum distribution method of withdrawal for beneficiaries.

Married or unmarried individuals, those with or without children, or individuals in same sex relationships need to find out about their employer's retirement plan provisions and if possible, move that money NOW! In the same company cited earlier, two other coincidentally single people died recently with their money in the plan. Their beneficiaries are asking why the employer didn't do more to advise employees about this. In both instances, a little planning by the employee and better education by the employer could have prevented unsuspecting beneficiaries from suffering undue tax burdens of extraordinary proportions.

Everyone can avoid these pitfalls by taking a little time to prepare. Set up a personal or "Individual Retirement Arrangement" – IRA with a bank, broker, or even with the company that holds the employer plan. Call the 800 number on your monthly statement and ask if an IRA rollover is available. If employer retirement money is available to transfer, the employer's withdrawal form is usually required to effect the transaction. Occasionally, the employer's service provider may ask the IRA receiver to provide a transfer form but that is rare. All withdrawal forms require the same information such as name, social security number, address, where the money is to go, and what the account number is, etc. The biggest hurdle here is to locate which boxes need a check mark and which lines need information. Employer HR representatives will sometimes help with this. If not, the financial institution receiving the IRA will surely provide guidance. Next, follow up. Wait about two weeks after submitting the forms then call the IRA holder to make certain the correct amount of money is in the account. Check with HR as well or call that 800 number on your 401k statement. There may be a nominal fee imposed by the transferring

company but the assurance of protecting your family and ongoing tax deferral are worth it. Then, relax. You have done the right thing to protect your beneficiaries.

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