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IRA Legal Issues

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Learning Objectives

At the completion of this course you will be able to

- recognize power of attorney (POA) issues,
- understand the roles of a guardian/conservator for IRA transactions,
- identify and resolve abandoned property issues, and
- determine the correct process for paying IRA fees.

Icon Legend

Individual Exercise

Group Exercise

Group Discussion

Example

Job Aid

Additional Information

Handling Legal Issues

Financial organizations should not give tax or legal advice to IRA owners. This function should be left to tax advisors and attorneys who play an important role in advising individuals about their retirement needs. As a practical matter, however, financial organizations often find themselves fielding legal questions. These questions may extend well beyond the bounds of IRA maintenance. At times, these legal issues need to be referred to the financial organization's attorney. For issues that are likely to arise on a regular basis, the attorney may establish written guidelines to ensure that matters are properly handled. But financial organizations must always be alert to legal issues that may arise and to the laws that govern these issues.

For the most part, federal laws govern IRAs. But numerous state laws also may affect IRAs—including the following.

- Financial organization law (e.g., credit union charters or insurance company regulations)
- Tax law
- Property law
- Probate law
- Trust law
- Family law
- Contract law

Power of Attorney

A power of attorney (POA) is a written document authorizing one person (known as the attorney-in-fact or agent) to act on behalf of another person (known as a principal or grantor). POAs are often granted by individuals who will be unavailable to conduct their financial business for a limited period of time. This may include authorizing someone to make contributions or take distributions from an IRA on behalf of the ill or absent individual.

Often the authority to act is limited by the principal. It may be limited to a certain time period or it may be limited in scope.

Durable POA	Nondurable POA
• Agent’s authority continues even if principle becomes legally incompetent • Should contain provision that POA will remain effective upon principle’s incapacity • May confer broad authority to the agent	• Agent’s authority terminates if principle becomes legally incompetent • May confer broad authority to the agent

State law governs the rules for determining whether a POA is valid and how it may be used. Any legally competent adult may execute a valid POA.

NOTE: *The term “power of attorney” often describes both the POA document itself and the actual authority (power) given by the document.*

Documentation

There are several types of documents that individuals can use to establish a POA.

Fill-in-the-Blank

Some financial organizations offer “fill in the blank” POA forms, typically drafted by the financial organization’s attorney. This permits a client, such as an IRA owner, to grant authority to an agent with minimal effort. Often these forms are used to conduct routine IRA transactions, such as deposits or investment renewals.

Financial organizations offering fill in the blank POA forms must be careful not to provide legal advice to the IRA owner completing the document. Because of this concern, some financial organizations do not provide this form, and insist that IRA owners have their own lawyers draft the POA document.

Statutory Short Form

Some state statutes also include a form that permits consumers to select which powers they are assigning to an agent. These "statutory short form" POAs make it easy for individuals to complete a valid POA without an attorney's help. This may, however, cause even more reliance on financial organizations to understand the POA rules. Fortunately, state statutes that include a "pre-approved" form also spell out the specific scope of each power selected by the principal.

Attorney Drafted

Any competent adult may execute a valid POA document. As with wills, POA documents need not be drafted by a lawyer, but many individuals prefer to retain a lawyer to ensure that the POA document is properly drafted and executed.

Revoking a POA

There are several reasons that a principal may want to revoke a POA. For example, the agent may no longer be able to fulfill the functions outlined in the POA form or the principal and agent may have a disagreement about decisions made pursuant to the authority granted in the form.

A POA can be revoked by writing, by act (destructive act together with intent to revoke), by presumption, or even orally. The attorney-in-fact must receive notice of the revocation. As a result, it is a good idea to have a written document as proof of the revocation.

Following the revocation, the principal should

- notify all parties or institutions (e.g., banks, hospitals) where the form was being used that the POA no longer exists, and
- collect and destroy any copies of the revoked POA form.

Sample POA Revocation

To WHOM IT MAY CONCERN:

I ______________________________ (the "Principal"), revoke and declare null and void the POWER OF ATTORNEY I granted to ____, which is dated ____________________, 20_____.

Please be advised that the above-named person no longer has power or authority to act as my attorney in-fact in any way.

Date: _______________________ ____

(Principal)

The foregoing instrument was acknowledged before me this _____________________ day of ___________________________, 20_____, by __________________________________.

____

(Notary Public)

Checking the POA

Before acting upon the direction of an individual with a POA document, a financial organization may wish to obtain a copy of the POA document and present it to its attorney, or ask the attorney to devise a set of guidelines to be followed when dealing with POAs. In determining whether the POA is valid, the following issues should be considered.

Signatures

- Is the POA in writing?
- Are the principal and the attorney-in-fact identified?
- Is the POA signed and dated by the principal, is the document acknowledged (if necessary) by the attorney-in-fact, and is the document notarized (if necessary)?

Scope

- What is the nature and scope of the power granted? (Is there authority to conduct retirement plan transactions?)
- What type of power is granted (durable or nondurable)?
- What is the document's effective date? Has the power expired or terminated? Is there an event that must occur before the POA is effective?

Documentation

- Retain a copy of the POA in the principal's file
- Retain a copy of the identification presented by the attorney-in-fact

Miscellaneous Issues

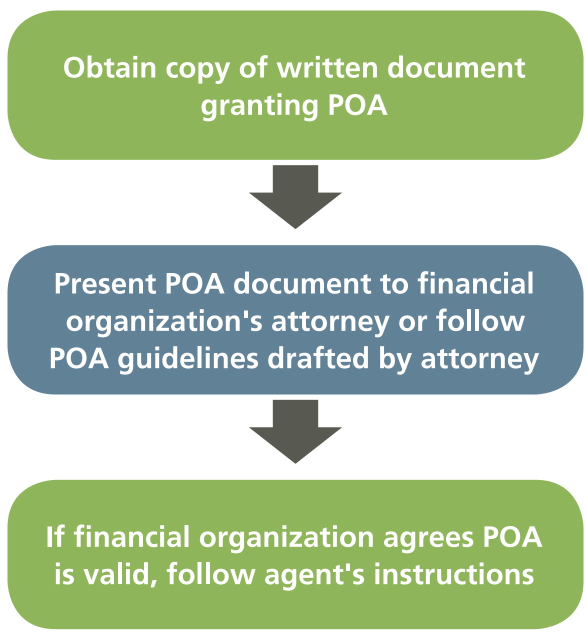
- Does state law provide protection for a financial organization that acts upon a POA that appears to be valid?
- Does the financial organization need an attorney to review the POA?

Financial Organization Responsibilities

Because attorneys-in-fact “step into the shoes” of the principal, financial organizations should follow the instructions of the attorney-in-fact, just as they would comply with requests by the principal. Provided that the agent does not exceed the scope of the authority conferred in the POA, the financial organization must treat the agent just like the principal. Many states give financial organizations protection from liability when they rely on a POA that appears to be valid.

Whether dealing with a principal or with an agent, financial organizations are obligated to ensure that investments are protected and that transactions are properly conducted. The surest way to guarantee that this is done is to obtain and follow the direction of legal counsel familiar with individual state requirements.

Before acting upon the direction of an individual with power of attorney, a financial organization generally should take the following steps.



POA Documents

Leslie, age 45, was in your financial organization yesterday and presented a POA document for her father Craig. Leslie believes the POA allows her to take distributions from Craig's Traditional IRA. The staff member who received the POA is asking you if Leslie is allowed to take a distribution.

What is your process for handling this POA?

Guardianship/Conservatorship

Guardian

A guardian is an individual, appointed by a court, who is responsible for taking care of and managing the person and the property of an individual (sometimes called a ward) who, by reason of mental or physical health, is considered by the court to be incapable of administering her own affairs.

In its order appointing the guardian, a court generally will outline the responsibilities that the guardian will assume. A court may limit the guardian's powers to handling only the property of an individual or may extend the powers to require the guardian to make decisions regarding the residence and care of the ward. An individual who has been granted less than full control over both the person and the property is sometimes called a "conservator."

A guardianship relationship is very different from the relationship created by a power of attorney. Under a power of attorney, the principle decides who will make decisions regarding her property and the scope of the agent's authority. The power of attorney generally will terminate if the individual becomes incapacitated. A guardian, on the other hand, is appointed by a court, usually because an individual has become incapacitated. The court decides what powers the guardian will exercise.

Financial Organization Responsibilities Regarding Guardian

The requirements for guardianship proceedings and for the orders appointing the guardian vary from state to state. The scope of the guardianship appointment varies from case to case. A financial organization's attorney can point out any special concerns to watch for under a particular state's laws.

If an IRA owner becomes subject to guardianship, the financial organization may be called upon to follow the guardian's directions regarding the IRA owner's IRA. If the financial organization learns that an IRA owner has become the subject of guardianship or conservatorship proceedings, the financial organization should take the following steps.

1. Obtain a copy of the order appointing the guardian so the financial organization can identify the individual who may now have authority to conduct transactions within the IRA.
2. Have the financial organization's attorney review the guardianship order to determine whether the guardian has the power to direct contributions, distributions, or other transactions with respect to the IRA. As an alternative to submitting each order to an attorney for review, the financial organization could obtain guidelines from the attorney to be followed under a guardianship order.

Power of Attorney vs. Guardian

	Power of Attorney	**Guardian/Conservator**
When effective?	During IRA owner's lifetime	During IRA owner's lifetime
Mental status?	Competent or incapacitated	Incapacitated
Scope?	Individual defines	Court determines
Duration?	Individual defines	Court determines
Creator of power?	Individual	Court

State-Sponsored Retirement Plans

Because of the lack of progress on a federal level, including lack of action by Congress to increase retirement plan coverage, more than half of the states in the U.S. have adopted or are considering establishing state-coordinated retirement savings programs.

One category of retirement savings programs that has resulted from state legislation is the automatic IRA program.

Automatic IRA Program

Under a state-coordinated automatic IRA program, employees are automatically enrolled into a payroll-deduction IRA at a state-specified default rate unless they decline to participate. For example, employees may be automatically enrolled into a Roth IRA through payroll deduction at a rate of three percent unless they opt out. Employees also have the opportunity to make contributions made at a rate of their choice by opting into the program and selecting a different deferral rate.

Impact When Employee Is Under Age of Majority

The Internal Revenue Code and federal regulations contain no minimum age requirement for an IRA owner. Therefore, under federal law, even children with earned income may establish an IRA. When an individual establishes an IRA, he is entering into a contract with the financial organization. The terms of the IRA plan agreement essentially are the terms of the contract. In most states, there are restrictions on the ability of a minor, which is a person under legal age, to enter into a valid contract. As a result, if a minor wants to establish an IRA (with or without parental consent), the financial organization would simply have to make a business decision. It might decide to allow for a minor IRA with a parent's signature—and choose not to without one. In many states, the parent automatically is the guardian for handling the affairs of a child. But in the state auto-IRA context, with employees being automatically enrolled into the program, the custodian should make sure that the state statutes or regulations specifically authorize minor accounts—or at least remove any roadblocks for establishing them.

For example, in most states, minors can contract for "necessaries," such as medical treatment. Oregon specifically allows minors 14 or older to consent to mental health services or substance abuse treatment. Oregon also allows minors to contract with banks to receive payments that are below a certain annual threshold. So a minor in Oregon can open a bank account to receive payroll checks (up to $10,000 a year) without parental consent. But the challenge with Oregon law is that the deposits would have to be held in an FDIC-insured savings account. This type of restriction would not seem to work well with state-facilitated auto-IRA programs, which generally require that participants invest in certain "municipal fund securities." To allow minors to participate in state IRA programs, states that require minor accounts to be invested in FDIC-insured accounts would have to revise their rules to remove such a restriction.

"Minor contracts" that states specifically authorize are not voidable by the minor. But, if a minor enters into a contract that is not spelled out in state statutory law, the common law governs. That is, the contract is voidable by the minor upon reaching majority. This may put the financial organization at risk of potentially costly lawsuits.

In addition, there may be other practical considerations, as well. For example, some parents may not approve of any entity contracting with their children without parental consent. Providing for parental consent could lessen parents' concerns, but what happens when a parent refuses to consent—and the account is established anyway? In addition, getting parental consent would clearly slow down the auto-enrollment process, adding to costs.

While the risks of permitting minors to establish IRAs in a state-facilitated auto-IRA program are minimal, they are real. States may have to amend their rules to address minor accounts in such programs. In addition, if a state decides to proceed with auto-enrolling eligible minors, then it should be willing to cover any risks (and costs) that service providers encounter in the process.

SIMPLE IRAs

SIMPLE IRA plans are designed for small businesses (generally those with 100 or fewer employees) and employers who are seeking a salary deferral feature, plan simplicity, and cost effectiveness. In exchange for this simplicity, the employer must commit to making modest annual contributions. Unlike qualified retirement plans (e.g., 401(k) plans) in which assets are held in a trust for the benefit of plan participants, SIMPLE IRA plan employer contributions and employee deferrals are made to each employee's own SIMPLE IRA.

Automatic Enrollment

SIMPLE IRA plans may include a plan feature allowing the employer to automatically deduct a certain percentage or dollar amount from an employee's wages and contribute that to the employee's SIMPLE IRA, unless the employee makes an election not to contribute or to contribute a different amount. The IRS has issued guidance in IRS Notice 2009-66, including a sample plan amendment, that can be used by prototype sponsors of SIMPLE IRA plans (using a designated financial institution) to add an automatic contribution arrangement to their plans.

Impact When Employee Is Under Age of Majority

Like state-sponsored retirement plans, the custodian for a SIMPLE IRA should make sure that the state statutes or regulations specifically authorize minor accounts—or remove any roadblocks for establishing them. This includes, evaluating whether IRA agreements are specifically permitted as "minor contracts" under state law; whether there is litigation risk and to the extent that risk is acceptable; and whether any policy concerns will dictate the financial organizations business practice (e.g., auto-enrolling minors without parental consent).

Whether a financial organization works with auto-enrollment plans or not, it should meet with its attorney and establish procedures to be followed whenever a minor opens an IRA. These procedures generally should follow the format used when minors open other types of accounts at the financial organization. Where an adult is co-signing the documents of the minor, the adult's signature, along with the relationship to the child, should clearly appear on each of the forms.

Escheat Laws

Many financial organizations struggle with IRAs that are left unclaimed or abandoned. How must these IRAs or other assets be handled to satisfy both a financial organization's duty as trustee or custodian and its desire to "clean up" inactive accounts?

In the United States, escheat laws grant individual states rights to abandoned property. Each state has its own laws setting procedures and timelines for reporting and reverting unclaimed or abandoned property to the state. Each financial organization should determine how any relevant state law treats abandoned property. Competent legal counsel should be consulted to provide specific procedures to properly report and pay unclaimed accounts.

Identify Abandoned IRAs

Section 2 of the Uniform Unclaimed Property Act (i.e., the Act) provides guidance for IRAs (or other deposits at financial organizations) that are presumed abandoned. An update to the Act, entitled the Revised Uniform Unclaimed Property Act ("RUUPA") was completed in late 2016. Most states have enacted a version of the Act; earlier revisions promulgated in 1981 and 1995.

In general, accounts are presumed abandoned if the IRA owner has not communicated an interest in the account after three years following the date distributions are required to begin. IRAs can be vulnerable because IRA owners typically let their accounts grow without any activity. But because escheat laws are often applied at the individual level rather than the account level, if an IRA owner regularly contacts the financial organization regarding another account, investment, or loan, that individual's IRA may be protected from seizure.

- Escheat periods vary by state (five or seven years is common).
- Some states do not start the escheat period until the required beginning date (i.e., April 1 following the year the IRA owner attains age 70½).

State escheat laws normally do not distinguish between IRAs and other accounts. If a financial organization discovers this is true in its state, then it should apply the normal escheat rules to IRAs.

Locating Missing IRA Owners

Each year, financial organizations must report to the state administrator or treasurer those accounts or funds presumed to be abandoned under the Act. Before this is done, however, the financial organization must again attempt to inform the apparent IRA owner at her last known address that the financial organization holds the property.

Reporting Abandoned IRAs to the State

If locating efforts are fruitless, the financial organization must file a report with the state. Individual state law prescribes what information must be included in the report. The report generally is due before November 1 of each year, reflecting property presumed abandoned as of June 30 of the same year. Later in the year the state will publish a notice titled *Notice of Names of Persons Appearing to be Owners of Abandoned Property*. This notice appears in a newspaper circulating in the specific county that contains the IRA owner's last known address and reveals information about when and how property may be claimed. In addition, the state must again mail a notice to each missing IRA owner whose last known address is listed in the report.

Paying Unclaimed IRAs to the State

The Act states that within six months after the final date for filing the report, all abandoned property required to be reported must be paid or delivered to the proper state administrator. The financial organization should complete and retain a withdrawal statement, detailing the reason for the distribution.

In most states, the government takes custody, not title, of the property. Under the Act, the state waits three years, then sells the property (if other than cash) to the highest bidder at a public sale. If an apparent owner subsequently makes a proper claim to the IRA, the state generally will pay over or deliver the IRA to the claimant.

The Act protects financial organizations that pay over abandoned property in good faith, it also provides for criminal penalties for persons who willfully violate the Act. Failure to report abandoned property is punishable as a misdemeanor offense. Failure to pay or deliver the property to the state is a gross misdemeanor offense.

Reporting and Withholding for Abandoned IRAs

In May 2018, the IRS released Revenue Ruling (Rev. Rul.) 2018-17, which addresses how financial organizations should report IRAs that they escheat to the state. Rev. Rul. 2018-17 verifies that a financial organization must report these payments on the applicable year's Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contract, etc.*, identifying the IRA owner as the recipient. The revenue ruling also states that these payments are treated as taxable distributions subject to the federal IRA withholding rules. The IRS did not specifically address how a financial organization should satisfy the withholding notice requirement. But informal IRS guidance suggests that financial organizations may satisfy this requirement by giving the state the withholding notice. Based on Rev. Rul. 2018-17, it appears that the state may not waive withholding on the IRA owner's behalf.

Rev. Rul. 2018-17 did not address reporting for beneficiary IRAs. Conservatively, the financial organization should use code 4 to report the distribution on Form 1099-R in the beneficiary's name and Social Security number. If you do not have the beneficiary's Social Security number, leave the "Recipient's identification number" box blank on Form 1099-R.

The revenue ruling states that financial organizations will not be treated as failing to comply with the withholding and reporting requirements for payments made before the earlier of January 1, 2019, or the date it becomes reasonably practicable to comply with those requirements. In January 2019, the IRS issued Rev. Rul. 2018-90, extending this deadline to the earlier of January 1, 2020, or the date it becomes reasonably practicable to comply.

Escheat Laws

Gloria, age 83, had a Traditional IRA at your financial organization. On June 12, 2014, Gloria passed away. Her brother, Bryan Carlson, is the beneficiary of her IRA but has not made an election to receive the IRA assets. According to your state law, you may escheat the assets to the state. Gloria's Traditional IRA currently has a balance of $83,984.25. You must report this transaction to the IRS.

Complete IRS Form 1099-R to report the transaction.

9898 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and phone no. SUNFLOWER FINANCIAL ORGANIZATION 334 MAIN STREET FARMINGDALE, NY 11735	1 Gross distribution $ 2a Taxable amount $	OMB No. 1545-0119 2019 Form 1099-R		**Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.**
	2b Taxable amount not determined ☐	Total distribution ☐		**Copy A For Internal Revenue Service Center** **File with Form 1096.**
PAYER'S TIN 11-4444444 / RECIPIENT'S TIN 999-99-2005	3 Capital gain (included in box 2a) $	4 Federal income tax withheld $		
RECIPIENT'S name BRYAN CARLSON	5 Employee contributions/ Designated Roth contributions or insurance premiums $	6 Net unrealized appreciation in employer's securities $		For Privacy Act and Paperwork Reduction Act Notice, see the **2019 General Instructions for Certain Information Returns.**
Street address (including apt. no.) 192 CHERRY STREET	7 Distribution code(s) / IRA/ SEP/ SIMPLE ☐	8 Other $ %		
City or town, state or province, country, and ZIP or foreign postal code FARMINGDALE, NY 11735	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. / FATCA filing requirement ☐	12 State tax withheld $ $	13 State/Payer's state no.	14 State distribution $ $	
Account number (see instructions) / Date of payment	15 Local tax withheld $ $	16 Name of locality	17 Local distribution $ $	

Form **1099-R** Cat. No. 14436Q www.irs.gov/Form1099R Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

IRA Fees

All IRA personnel should be familiar with how IRA fees and other charges are categorized and accordingly, how the expense is settled. IRA expenses can be split into two groups.

- Expenses that can be paid out-of-pocket or out of the IRA
- Expenses that must be paid out of the IRA

Expenses That Can Be Paid Either Out-of-Pocket or Out of the IRA

Fees that are ordinary and necessary expenses for the administration of the IRA can be paid either out-of-pocket or out of the IRA. For example, many financial organizations assess an annual fee for maintaining an IRA. In addition, fees for transactions such as rollovers, transfers, required minimum distribution calculations, terminations, and distributions are becoming more common. If an IRA owner engages an investment manager for the IRA, an investment management fee typically will be assessed. All of these fees are considered to be "trustee fees."

IRA owners may either pay trustee fees out-of-pocket to the financial organization, or have the fees debited from the IRA, if the IRA documents so permit (Treas. Reg. 1.404(a)-3(d), Rev. Rul. 84-146). Some financial organizations, through their plan documents, will dictate the method for fee payment. If the financial organization allows fees to be paid separately by the IRA owner, the financial organization generally will retain the right to charge the IRA for unpaid fees.

Trustee Fees Paid Out-of-Pocket

Before 2018, if the IRA owner was allowed to pay the trustee fees out-of-pocket, he may have been able to take a deduction for the fees. IRA trustee fees generally are considered to be an ordinary and necessary expense incurred in connection with the maintenance of the IRA. Therefore, the IRA owner generally was entitled to a deduction under IRC Sec. 212 for the IRA administrative fee if the IRA owner itemized deductions exceeding two percent of adjusted gross income.

The Tax Cuts and Jobs Act of 2017 amended IRC Sec. 67 by adding a new subsection (g), which states "no miscellaneous deduction shall be allowed" for taxable years 2018 through 2025. This amendment effectively removes the ability to deduct trustee fees charged in connection with income producing investments and IRAs.

The IRA may not reimburse the IRA owner for trustee fees paid directly by the IRA owner. Any such reimbursement to the IRA owner is considered a reportable distribution to the IRA owner.

Trustee Fees Paid by the IRA

As an alternative to paying trustee fees separately, the fees may be debited from the IRA. If the IRA owner chooses to have the trustee fees paid from the IRA assets, the IRA owner is prohibited from reimbursing the IRA for the fees. Any attempted reimbursement is considered an IRA contribution, reportable on IRS Form 5498, *IRA Contribution Information*. If the IRA owner has already contributed the maximum amount for the year in which the reimbursement occurs, an excess contribution will occur.

Expenses That Must Be Paid out of the IRA

Fees that are not ordinary and necessary expenses for the administration of the IRA, including asset fees or capital expenditures must be paid out of the IRA. All of these fees are considered to be “nontrustee fees.” Asset fees and capital expenditures tend to arise when an IRA invests in alternative investments (e.g., real property, notes).

Likewise, commissions and sales charges resulting from investments such as stock and mutual funds are common in IRAs. The IRS ruled that brokers’ commissions are not recurring administrative or overhead expenses relating to the maintenance of the IRA. Rather, brokers’ commissions are incurred when the IRA assets are actually invested and relate to the IRA’s growth.

IRS Rev. Rul. 86-142 established that brokers’ fees for requested transactions are not to be considered recurring administrative expenses for the maintenance of the IRA. Because IRA owners may pay only recurring administrative expenses out-of-pocket, broker’s transaction charges generally must be deducted from the IRA balance. Any attempt to pay the broker directly or to reimburse the IRA for the commission or sales charge amount is considered a contribution to the IRA, reportable on IRS Form 5498. If the IRA owner has already made the maximum IRA contribution allowed for the year, any amount paid to the IRA or to the broker directly will be treated as an excess IRA contribution.

Commission and sales charges are not deductible under IRC Sec. 212.

Combination Fees

Under some fee arrangements, various types of fees are combined and charged to the IRA as one sum. For example, it is not uncommon for the asset manager's fee, the brokerage firm's fee, and the broker's commission to be combined and charged to the IRA as one fee. Such combined fees are sometimes referred to as "wrap fees."

The IRS has reviewed wrap fees in the qualified retirement plan context but has not issued official guidance on the payment and deductibility of these fees for IRAs. Presumably, combined IRA fees would be treated in the same manner as qualified plan wrap fees. In qualified plans, if the plan administrator can identify the portion of the combined fee attributable to commissions and sales charges and the portion that reflects trustee fees, the different portions of the fee may be paid separately.

But in Private Letter Ruling (PLR) 200507021, issued in November 2004, the IRS makes a distinction in defining when brokerage-related IRA fees may be paid outside an IRA rather than deducted from the IRA assets. In four investment portfolios cited in the PLR, clients each pay an annual single fee based on an asset-based formula, independent of the number or kind of investment transactions.

Clients who participate are predominantly paying for investment advisory, money management, and other trustee services. One other portfolio cited in the PLR allows investors to decide whether they would pay investment fees on a transaction-by-transaction basis, or by an annual asset-based formula. The IRS ruled that, if the IRA fee is asset based—varying by asset size, and not by the number of transactions—such fees may be considered recurring trustee expenses, and thus may be paid out-of-pocket. This allows retention of more tax-deferred assets in the IRA. See also PLR 201104061, issued November 2010.

NOTE: *A PLR may be relied upon only by the person (or persons) requesting the ruling.*

Liquidating Assets to Pay Fees

Because the payment of fees is an ongoing concern, most financial organizations have language in the IRA plan agreement (generally in or following Article VIII) allowing the financial organization the right to liquidate assets, if necessary, to pay fees. Another alternative for financial organizations with fee concerns is to require that the IRA owner maintain a certain amount of liquidity in the IRA to be used to pay fees or other IRA expenses.